Opinion Issued March 19, 2020

SCR 19-0005
SPECIAL COURT OF REVIEW

IN RE INQUIRY CONCERNING THE HONORABLE GENA SLAUGHTER
CJC No. 18-1309

This case involves the circumstances surrounding the confirmation and collection of an arbitration award that resulted in the Commission on Judicial Conduct ("CJC") issuing a Public Reprimand against the Respondent, the Honorable Gena Slaughter, Judge of the 191st Judicial District Court in Dallas County, Texas. After the Respondent appealed the sanction, the Chief Justice of the Texas Supreme Court formed this Special Court of Review[1] by lot, to conduct a trial de novo to review the CJC's sanction. *See* TEX. GOV'T CODE § 33.034 (providing procedure for appealing CJC's sanctions).

We note at the outset that the function of the CJC "'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 Slaughter*, 480 S.W.3d 842, 844–45 (Tex. Spec. Ct. Rev. 2015) (per curiam) (quoting *In re Lowery*, 999 S.W.2d 639, 648 (Tex. Rev. Trib. 1998, pet. denied)). Similarly, a special court of review is not charged with punishing but with

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[1] This Special Court of Review consists of The Honorable Sherry Radack, Chief Justice of the First Court of Appeals, presiding by appointment; The Honorable Bonnie Sudderth, Chief Justice of the Second Court of Appeals, participating by appointment; and The Honorable Luz Elena Chapa, Justice of the Fourth Court of Appeals, participating by appointment.

providing guidance to judges and protection to the public. *In re Davis*, 82 S.W.3d 140, 150 (Tex. Spec. Ct. Rev. 2002).

Facts

In April 2015, an arbitrator ruled in favor of Dr. Ramana Jones in her shareholder suit against Carlos & Parnell, M.D., P.A., ("C & P"), an entity that operated an OB-GYN clinic. Jones then moved to confirm the arbitration award while C & P moved to vacate the award. Between May and December 2015, Jones and C & P litigated whether the trial court should confirm or vacate the award. During this time, the trial court held hearings on October 6, 2015 and December 9, 2015. After the December 9 hearing, the parties indicated that the Respondent stated that a decision would be forthcoming. Counsel for both sides continued to submit letters and briefing to the Respondent after the December 9, 2015 hearing, with the last pleading filed on December 15, 2015. Over the course of the next year, Jones's counsel called the Respondent's court coordinator multiple times to inquire on the status of a ruling on the motion to confirm. When those attempts did not result in a ruling, Jones retained appellate counsel, Kimberly Sims, who then filed an amended motion to confirm on December 21, 2016. Within nine days after Sims filed the amended motion to confirm, the Respondent confirmed the award on December 30, 2016.

C & P filed a motion for new trial, which the Respondent granted on March 15, 2017. The order granting the new trial resulted in an appeal to the Dallas Court of Appeals. On October 31, 2017, the Dallas Court of Appeals reversed the Respondent's ruling and rendered judgment confirming the arbitration award.[2]

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[2] *See Jones, M.D. v. Carlos & Parnell, M.D., P.A.*, No. 05-17-00329-CV, 2017 WL 4930896 (Tex. App.—Dallas Oct. 31, 2017, pet. denied) (mem. op.).

Once the mandate from the court of appeals issued, Jones attempted to collect on the judgment. When these attempts were unsuccessful, she then sought a writ of execution, which was assigned to Constable S. Boling. On June 13, 2018, Boling made a demand at the offices of C & P, but no payment was made. On June 22, 2018, Boling returned to the offices of C & P to execute the writ by taking business property at C & P's OB-GYN clinic. At the time of this attempted execution, C & P had patients actively receiving health care. Because of the potential disruption to patient care, Boling called the Respondent and expressed concern about executing the writ. The Respondent directed Boling to stop the execution until she had an opportunity to discuss the issue with both parties' attorneys.

On the same day that Boling was attempting to execute the writ, Sims received a call from an attorney with the Gregory Ackels law office, the firm representing C & P. According to Sims, the attorney said that they would attempt to seek relief from the Respondent to prevent the execution of the writ. Later that day, Sims learned from Boling that the Respondent had stayed the writ's execution and that a hearing had been scheduled for Monday morning. On the day before the hearing, Sims sent a letter to the Respondent, explaining that she was not given notice of any emergency request for relief and that she believed that the Respondent stayed the writ's execution because of an *ex parte* communication with opposing counsel.

The next Monday, the Respondent met with both sides and determined how to proceed with the writ. C & P ultimately paid the judgment before further execution of the writ.

On June 27, 2018, Jones filed a complaint with the CJC, informing the CJC of her displeasure with the Respondent because of the length of time it took to rule on the motion to confirm the arbitration award and the Respondent's decision to stay the writ of execution without speaking with her attorney. During the course of its investigation, the CJC sent the Respondent a

Staff letter of inquiry on February 26, 2019, concerning the Respondent's (1) failure to rule on the motion to confirm the arbitration award over a 15-month period, (2) alleged *ex parte* communication with opposing counsel, Gregory Ackels, and (3) failure to pay outstanding bar dues. The CJC requested a response to their investigation by March 29, 2019. After not hearing from the Respondent by the deadline, the CJC e-mailed the Respondent on April 3, 2019, stating that the CJC contacted the Respondent to inquire when she would be submitting a response to the Staff letter of inquiry. The CJC e-mail further stated that it was attaching a copy of the February 26, 2019 letter to the e-mail along with additional documentation because it had received a voicemail from the Respondent's court coordinator, who stated that the Respondent did not receive any correspondence from the CJC. The additional documentation included further details about the outstanding bar dues.[3]

On October 11, 2019, the CJC issued a public reprimand in CJC-18-1309 against the Respondent, finding that the Respondent failed to timely execute the business of her court, engaged in a prohibited *ex parte* communication with opposing counsel, and failed to submit a response to the Staff letter of inquiry and thus failed to cooperate with the CJC.

Procedure

The Texas Constitution provides that after receipt of a written complaint and an investigation, the CJC may, among other things, issue a private or public admonition, warning, reprimand, or requirement that the judge obtain additional training or education. TEX. CONST. art. V, § 1–a(6)(A), (8). Upon receipt of notification of any type of sanction, the judge may request a special court of review be appointed by the chief justice of the supreme court to review the action of the CJC. TEX. GOV'T CODE § 33.034(b); TEX. RULES REM'L/RET. JUDG. R. 9(a).

[3] The CJC instituted formal proceedings against the Respondent for failing to pay her bar dues. After formal proceedings were withdrawn, on February 7, 2020, the CJC publicly reprimanded the Respondent in CJC-19-0390 for failing to (1) maintain her Texas law license in good standing and (2) cooperate with the CJC.

The CJC then files a charging document with the allegations of judicial misconduct against the judge. TEX. GOV'T CODE § 33.034(d). The special court of review holds a trial de novo and renders its decision by written opinion. *Id*. § 33.034(e), (h). As this review is governed to the extent practicable by the rules of law, evidence, and procedure that apply to the trial of a civil action, the CJC has the burden to prove the charges against a respondent by a preponderance of the evidence. *See id*. § 33.034(f); *In re Hecht*, 213 S.W.3d 547, 560 (Tex. Spec. Ct. Rev. 2006); *In re Canales*, 113 S.W.3d 56, 66 (Tex. Rev. Trib. 2003, pet. denied); *In re Davis*, 82 S.W.3d 140, 142 (Tex. Spec. Ct. Rev. 2002). This special court may dismiss the charges, affirm the CJC's decision, impose a lesser or greater sanction, or recommend that formal proceedings be instituted by the CJC for censure or removal. TEX. RULES REM'L/RET. JUDG. R. 9(d). The decision of the special court is not subject to review. TEX. GOV'T CODE § 33.034(i); TEX. RULES REM'L/RET. JUDG. R. 9(c).

As provided by our rules and statutes, the Respondent requested the appointment of a special court of review to hear the matter de novo. On January 23, 2020, this Special Court of Review convened for a de novo trial. The CJC presented its case, and the Respondent appeared and testified.

Failing to Timely Execute the Business of Her Court

In its first charge, the CJC alleged that the Respondent "failed to timely execute the business of her court by failing to enter an order on the competing motions to either confirm or vacate the arbitration award for 15 months, in violation of Article V, Section 1-a(6)A of the Texas Constitution, Section 33.001(b)(1) of the Texas Government Code, and Rule 7 of the Texas Rules of Judicial Administration."

A. Applicable Law

The Texas Constitution provides that a judge may be disciplined for a willful violation of the Code of Judicial Conduct or for willful or persistent conduct that is clearly inconsistent with the proper performance of his or her duties or that casts public discredit upon the judiciary or 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 willful violation of a provision of the Code of Judicial Conduct. TEX. GOV'T CODE § 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 Sharp*, 480 S.W.3d 829, 833 (Tex. Spec. Ct. Rev. 2013); *Davis*, 82 S.W.3d at 148; *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. *Davis*, 82 S.W.3d at 148; *see In re Barr*, 13 S.W.3d 525, 539 (Tex. Rev. Trib. 1998).

Rule 7 of the Texas Rules of Judicial Administration provides, "A district . . . judge shall: (2) rule on a case within three months after the case is taken under advisement[.]" TEX. R. JUD. ADMIN. 7, *reprinted in* TEX. GOV'T CODE, tit. 2, subtit. F app. Section 33.001 states that "willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties includes: willful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business." TEX. GOV'T CODE § 33.001(b)(1).

B. Analysis

At trial, the evidence showed that after Jones moved to confirm the arbitration award, C & P filed a competing motion to vacate the arbitration award. The parties then litigated "back and forth" whether the Respondent should confirm or vacate the award. The last pleading filed in the Respondent's court concerning the parties' arguments on whether to confirm or vacate the arbitration award occurred on December 15, 2015. After that time, Jones's attorney, Penny Robe, called and e-mailed the Respondent's court coordinator multiple times to inquire when the Respondent would rule. Robe's testimony also expressed reluctance to file an additional motion for a status conference or a ruling because the Respondent had already held two hearings and had received additional briefing. Sims testified that she also called the Respondent's court coordinator sometime after August 2016 to determine the status of the motion to confirm. After speaking with the court coordinator, Sims understood that she needed to file an amended motion to confirm.

The Respondent testified that the motion to confirm "fell off my radar," "there were serious legal issues" with the motion to confirm, and it "fell off of my world." She testified that "it fell off my world until the following December when—the motion was filed and a hearing was set I went, oh, no, and got it, pulled my notes, did everything, got an order." She agreed that it was an oversight and a mistake by her. The Respondent testified that she normally receives e-mails from her court coordinator regarding phone calls from parties requesting rulings or hearings, but she searched and did not see any e-mails from her court coordinator. She added that "without a motion or a hearing or a status conference being set, I never knew any of that was going on." Once the motion and hearing were set in December 2016, the Respondent testified "that was the first time I realized it fell off my world and I ruled on it."

Here, the evidence shows that between the dates of December 15, 2015, when the last pleading was filed, and December 21, 2016, when an amended motion was filed, no motions were filed requesting a status conference or a ruling on the motion to confirm. However, once Sims filed the amended motion to confirm the arbitration award on December 21, 2016, the Respondent ruled within nine days. Although we do not condone failing to rule on a motion for over 12 months, the evidence presented does not show that Respondent willfully failed to rule on the competing motions. Instead, the evidence shows that the Respondent mistakenly failed to rule until the amended motion was filed.

We conclude that the 12-month delay from December 2015 to her ruling in December 2016 was not the result of a willful failure to exercise the business of the court, but rather the result of a lack of diligence. While a willful failure to exercise the business of the court is actionable, a lack of diligence is not. *See In re Sharp*, 480 S.W.3d at 833. We therefore hold that the CJC failed to prove by a preponderance of the evidence that the Respondent willfully chose not to rule on the competing motions to either confirm or vacate the arbitration award for 15 months.

***Ex parte* Communication**

In its second charge, the CJC alleged that the Respondent engaged in "a prohibited *ex parte* communication with opposing counsel that resulted in her issuing a temporary stay of a valid writ of execution because of the [Respondent's] concerns about its execution during C & P's office hours in violation of Canon 3B(8) of the Texas Code of Judicial Conduct."

A. Applicable Law

Canon 3B(8) provides, in pertinent part, "A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the

parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding." TEX. CODE JUD. CONDUCT, Canon 3B(8), *reprinted in* TEX. GOV'T CODE tit. 2, subtit. G, app. B. *Ex parte* communications are "'those that involve fewer than all of the parties who are legally entitled to be present during the discussion of any matter. They are barred in order to ensure that "every person who is legally interested in a proceeding [is given the] full right to be heard according to law."'" *In re Thoma*, 873 S.W2d 477, 496 (Tex. Rev. Trib. 1994) (citing Jeffrey M. Shaman, et al., JUDICIAL CONDUCT AND ETHICS, § 6.01 at 145 (1990)).

B. Analysis

At trial, the Respondent testified that Constable Boling called her on Friday, June 22 regarding his concerns with executing the writ. She then sent an e-mail on the same day at 1:36 p.m., to the Dallas County Constable's Office, which stated,

> Constable Boling is in possession of a Writ of Execution in DC15-5163 and has attempted to execute on it. Concerns have been raised because the Defendant subject to the Writ is a functioning ob/gyn office with patients in the office receiving care today. Because of these concerns, I have notified Constable Boling to stop executing the Writ and wait until I can confer with the attorneys for both parties. This email serves as notice that this Court is temporarily staying the execution of the writ.

She further testified that while opposing counsel, Greg Ackels, entered her courtroom around 1:30 p.m. on June 22, she did not enter the courtroom until 1:40 or 1:45 p.m. By the time she saw Ackels, she had already sent the e-mail, staying the execution of the writ. She testified that she talked to Greg Ackels "a little bit" and told him to come back first thing Monday morning. She remembered "telling him I had stopped the writ until Monday, to come back Monday and I believe he told me he had—I'm pretty sure he told me he contacted Ms. Sims and

that she wasn't going to come down and that he had other issues regarding some of the equipment being leased and my statement was come back Monday." The Respondent also testified that she did not receive any input from either plaintiff's or defendant's counsel before instructing Constable Boling to stop execution of the writ.

Greg Ackels essentially confirmed the Respondent's testimony. He stated that he did not arrive in the Respondent's courtroom until 1:40 or 1:50 p.m., and "I know I didn't see her until closer to 2:00 o'clock because I waited in her courtroom for her to come out." He recalled that when the Respondent came out, "The judge informed me that she had issued a mandate, edict, whatever you want to call it, for the constable to stand down and that we would—she would set a hearing immediately." When asked if anything of real substance was discussed with the Respondent around 2:00 p.m., Ackels responded, "Well, substantively, she was aware of why I had shown up. But as far as, you know, saying judge, here's my side of the story and don't—I'm not telling Kimberly Sims to not be here. There was nothing like that. The judge had apparently already made a ruling, had already talked to the constable. . . ."

Sims testified that she received a voicemail from Henry Ackels at approximately 12:27 p.m. on June 22, informing her that Greg Ackels was going to seek relief from the Respondent regarding the writ's execution. Sims also testified that she heard from Constable Boling later on June 22 that the execution had been stayed by the Respondent. Sims understood that Greg Ackels or someone from his office had a communication with the Respondent, which led to the writ not getting executed on June 22. After the events of June 22, Sims wrote to the Respondent on June 24, 2018, stating that "it appears that the Court, through an *ex-parte* communication with Greg Ackels or someone from his firm, was told that Officer Boling was interfering with patient

care in seeking to execute the writ." At trial, Sims clarified why she thought the Respondent had an *ex parte* communication:

> She was ordering something without any request by a party except that I found it to be problematic when I read this e-mail the first time because the words she used in explaining that it's a functioning OB-GYN, that's the same explanation that Henry Ackels told me that morning is why we shouldn't do it is because this is a functioning OB-GYN. She was using his words. That struck me immediately. I thought they've communicated when I read this E-mail and I thought there's no motion pending. How do you order something without anybody asking for it if no one asks for it.

Based on the testimony of the Respondent and Ackels, the evidence shows that the Respondent made the decision to suspend the writ's execution after speaking with Constable Boling and before she met with opposing counsel. Thus, even if an *ex parte* communication occurred with opposing counsel, the evidence shows that it did not cause the staying of the writ's execution, as alleged by the CJC. And, the only evidence tending to show that the Respondent engaged in an *ex parte* communication with opposing counsel Greg Ackels came from Sims, who testified that she believed the Respondent had an *ex parte* communication because the Respondent's e-mail used the same language that an attorney from Ackels' office used earlier in the day. We disagree that this evidence of Sim's belief, based on specific language used in an e-mail, shows by a preponderance of the evidence that the Respondent had a prohibited *ex parte* communication with opposing counsel.

Moreover, the communication between the Respondent and opposing counsel does not rise to the level of a prohibited *ex parte* communication because no evidence indicated that the Respondent and opposing counsel discussed the merits of the writ of execution. We therefore conclude that the CJC did not prove by a preponderance of the evidence that the Respondent engaged in a prohibited *ex parte* communication that resulted in her staying the writ of execution.

Failing to Cooperate

In its third charge, the CJC alleged that "[b]y failing to submit a response to Staff's letter of inquiry, [the Respondent] failed to cooperate with the [CJC] in violation of Canon 2A of the Texas Code of Judicial Conduct, Section 33.001(b)(5) of the Texas Government Code, and Article V, § 1-a of the Texas Constitution."

A. Applicable Law

Canon 2A provides, "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." TEX. CODE JUD. CONDUCT, Canon 2A. The Texas Constitution provides that a judge may be disciplined for a willful violation of the Code of Judicial Conduct or for willful or persistent conduct that is clearly inconsistent with the proper performance of his or her duties or that casts public discredit upon the judiciary or administration of justice. TEX. CONST. art. V, § 1–a(6)A. Section 33.001(b)(5) of the Texas Government Code provides, "For purposes of Section 1-a, Article V, Texas Constitution, 'willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties' includes: (5) failure to cooperate with the commission. TEX. GOV'T CODE § 33.001(b)(5).

B. Analysis

On February 26, 2019, the CJC notified the Respondent by a Staff letter of inquiry that it had received a complaint and that it was investigating the matter. The CJC asked the Respondent to respond to the letter, which included two inquiries. The inquiry at issue here, CJC-18-1309, included questions about failing to timely execute the business of the court and engaging in a prohibited *ex parte* communication. The second inquiry, CJC-19-0390, asked

Respondent about the failure to pay bar dues. The letter asked for a written response by March 29, 2019.

On April 3, 2019, the CJC sent an e-mail to the Respondent, stating that it had previously sent the February 26 letter and that on April 2, it had "contacted your court to inquire when you would be submitting your responses to the [CJC's] written questions." The e-mail also stated that the CJC received a voicemail on April 3 from the Respondent's court coordinator "stating that [the Respondent] did not receive any correspondence from [the CJC]." The CJC stated it was attaching the February 26 letter to the e-mail along with additional records obtained by the CJC during its investigation.[4] The e-mail also stated, "Please feel free to contact our office if you have any additional questions or wish to discuss this matter further."

On October 11, 2019, the CJC issued a public reprimand. The public reprimand states, "Judge Slaughter was offered the opportunity to either accept a tentative sanction in lieu of an appearance or appear before the [CJC] for an informal hearing. Judge Slaughter failed to respond to the [CJC's] invitation and chose not to appear."

Despite arguing at trial that the CJC had not heard from the Respondent at all until the Respondent filed her pretrial brief, the evidence actually shows otherwise. On June 18, 2019, the Respondent filed a response to the CJC. The Respondent's response concerned a different CJC inquiry—an investigation of the Respondent's failure to pay bar dues. Nevertheless, the response explains the Respondent's understanding that the CJC had two charges pending against her: the first charge relating to her failure to maintain her Texas law license in good standing and a second charge relating to her failure to respond to the Staff letter of inquiry. The Respondent states that she first became aware of the failure to pay her bar dues when she received the CJC's

[4] The additional documents included multiple failures by the Respondent to pay state bar dues.

e-mail dated April 3, 2019, and she acknowledged that the e-mail referenced a letter sent to her on February 26, 2019. The Respondent informed the CJC that she did not receive the February 26, 2019 letter, she understood that the letter was sent to her court address, and that her court staff denied receiving any type of "personal" or "confidential" mail during the relevant time period.

Respondent further stated that her failure to respond to the inquiry was not willful or deliberate, but due to a series of unfortunate events, mistakes, and stress. Respondent detailed a number of issues such as a very time-intensive matter before her court that coincided with the time that the CJC sent the inquiry e-mail, along with her father's health issues, her own health issues, a normal hearing and trial docket, and young children to care for. The Respondent further stated that she drafted a response to the CJC's inquiry but that she failed to file the documents from stress and exhaustion. Her response concluded by stating that her failures "were not due to willful misconduct or incompetence."

At trial, the Respondent admitted that she failed to respond twice.[5] She clarified that she "drafted a response, but I didn't mail it. Admittedly I failed to mail it. I was in the middle of crazy and my dad had started having a lot of health problems at that time. It just—I messed up."

In the February 26 Staff letter of inquiry, which Respondent received when she was sent the April 3 e-mail, the CJC asked her to respond to the charges of failing to rule in a timely manner and engaging in a prohibited *ex parte* communication. The Respondent's June 24 response shows that she did respond to the CJC's inquiry—albeit a different CJC inquiry—but

[5] At trial, the Respondent admitted that she received a tentative sanction from the CJC and that she was given an opportunity to appear before the CJC to explain her actions before the sanction became final, but that her response was due July 31, 2019, which was the day her father, who had been having serious health issues, died. Although the Respondent testified to a second opportunity to respond to the CJC by July 31, we confine our analysis to the Respondent's failure to respond to the Staff letter of inquiry of February 26 and the follow up e-mail of April 3 because the CJC's charging document was limited to that issue.

this second inquiry overlapped parts of the inquiry at issue here. Nevertheless, the Respondent did not respond to the February 26 letter regarding failing to rule in a timely manner and engaging in a prohibited *ex parte* communication. Although the Respondent testified at trial to a number of stressful events in her life, including a father in failing health, a busy trial docket, raising two children, and her husband's own health issues, we find that the CJC proved by a preponderance of the evidence that the Respondent did not respond to the Staff letter of inquiry.

Appropriate Sanction

After an informal proceeding, the CJC 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 § 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 § 74.055(c)(4)(A) (prohibiting former or retired judge from sitting by assignment after public reprimand).

In this case, the CJC issued the Respondent a public reprimand for failing to execute the business of her court, engaging in an *ex parte* communication, and failing to respond to the Staff letter of inquiry.

Sanctions should be determined on a case-by-case basis. *In re Canales*, 113 S.W.3d at 73. "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 at 648 (citing *Thoma*, 873 S.W.2d at 484–85).

In addressing the purpose of imposing sanctions for judicial misconduct, the Supreme Court of Nebraska has stated:

> The purpose of sanctions in cases of judicial discipline is to preserve the integrity and independence of the judiciary and to restore and reaffirm

> public confidence in the administration of justice. The discipline we impose must be designed to announce publicly our recognition that there has been misconduct; it must be sufficient to deter respondent from engaging in such conduct; and it must discourage others from engaging in similar conduct in the future. Thus, we discipline a judge not for purposes of vengeance or retribution, but to instruct the public and all judges, ourselves included, of the importance of the function performed by judges in a free society. We discipline a judge to reassure the public that judicial misconduct is neither permitted nor condoned.

In re Barr, 13 S.W.3d at 560 (quoting *In re Kneifl*, 217 Neb. 472, 351 N.W.2d 693, 700 (1984)).

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).

Here, we have already found that the CJC did not prove that the Respondent failed to execute the business of her court or that she engaged in a prohibited *ex parte* communication. However, the CJC did prove that the Respondent failed to respond to the Staff letter of inquiry. We consider failing to respond to the CJC a serious offense as the CJC is tasked with the responsibility of investigating judicial misconduct, and our laws specifically state that a judge

who fails to cooperate with the CJC has committed willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties. *See* TEX. PRAC. & REM. CODE § 33.001(b)(5). The judiciary is held to the highest of standards and is not immune to consequences when a violation of the rules has occurred. *See* TEX. CODE JUD. CONDUCT, Canon 1 (stating, "A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved"); *In re Barr*, 13 S.W.3d at 536 (stating, "By seeking and accepting the responsibilities of the office of judge, regardless of the level of office, a judge undertakes to conduct herself or himself both officially and personally in accordance with the highest standards that the citizens of Texas can expect").

Although the Respondent has also been publicly reprimanded in another CJC inquiry, we do not consider her actions here to be a pattern of misconduct because the charges relate to the same procedural facts and time period. Likewise, the Respondent's misconduct occurred out of the courtroom, she has acknowledged that she failed to respond, and she has expressed remorse. The Respondent has been a judge for 13 years, and the CJC has not apprised us of other complaints about the Respondent. Nothing about the Respondent's misconduct was an attempt to exploit her position to satisfy her personal desires.

In sum, after independently weighing these relevant factors and considering the purpose of issuing a sanction, we determine that a public warning is appropriate, rather than a public reprimand. Accordingly, after considering the pleadings, the evidence, the arguments of counsel, and the parties' pre- and post-trial briefing, the appropriate sanction is a public warning against the Respondent for her violation of the Code of Judicial Conduct and the Texas Constitution.

Conclusion

We find that the Respondent violated Canon 2A of the Code of Judicial Conduct and article V, section 1-a(6)A of the Texas Constitution. We issue the following sanction against the Respondent for this violation: Public Warning.