

Opinion Issued November 21, 2022



**DOCKET NO. 22-0002**

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

**IN RE HONORABLE LEE HARPER WILSON  
(CJC No. 19-1872)**

---

---

**OPINION**

The State Commission on Judicial Conduct received a complaint against the Honorable Lee Harper Wilson, a county court at law judge, and the Commission investigated. It found that Judge Wilson violated Canon 3B(8) of the Texas Code of Judicial Conduct. It issued a Public Reprimand and Order of Additional Education.

Judge Wilson sought review of the Commission's decision by trial de novo to a special court of review. The Commission prepared a charging document; it alleged that Judge Wilson violated Canons 2A, 3B(2), 3B(8), and Article V, section 1-a(6) A of the Texas Constitution. At the trial de novo, Judge Wilson testified to his actions and his reasons for them.

Having considered the evidence, we find that Judge Wilson violated Canon 2A. We affirm, on Canon 2A grounds, the public reprimand imposed by the Commission, but we set aside the requirement for additional education.

---

<sup>1</sup> The Special Court of Review consists of The Honorable Patricia O. Álvarez, presiding by appointment and Justice of the Fourth Court of Appeals; The Honorable Beth Watkins, Justice of the Fourth Court of Appeals, participating by appointment; and The Honorable W. Bruce Williams, Justice of the Eleventh Court of Appeals, participating by appointment.

## **BACKGROUND**

### **A. Judge Wilson's Background**

Judge Wilson was licensed by the State Bar of Texas in 1980, and he was board certified in criminal law in 1989. He was elected to the Harris County Criminal Court at Law No. 10 in November 2018, and he took the bench in January 2019.

### **B. DWI Offense**

Before that time, on October 22, 2018, Tabitha Lynn Lang was arrested for driving while intoxicated. She retained Michael H. Pham as her defense counsel.

### **C. DWI Pretrial Activity**

Lang's case was assigned to County Criminal Court at Law No. 10, where Judge Wilson was the presiding judge. The court's June 20, 2019 pretrial order, signed by Lang and Pham, required any motion for community supervision to be filed before or at the August 8, 2019 pretrial conference. At the pretrial conference, the case was set for trial on August 14, 2019. No motion for community supervision was filed on or before the date of the pretrial conference.

### **D. Voir Dire**

On the first day of trial, but before the trial began, Pham filed a motion for community supervision, and a "Defense Motion at Time of Entering Plea of Not Guilty," which requested that the jury assess punishment. The veniremembers were examined by the State. Pham chose not to ask questions of the veniremembers. Some veniremembers were struck for cause; others were stricken peremptorily, including by Pham.

After voir dire ended, the jurors were selected. Before they were sworn, Pham advised the court, with the jury present, that "I think [Lang] wanted to plead guilty after voir dire." Judge Wilson responded: "No, we're going to keep going."

The selected jurors were sworn, and Lang was arraigned.

**E. Attempted Guilty Plea**

After Lang was arraigned, with the jury present, the following colloquy took place:

Judge Wilson: How do you plead, Ms. Lang?

Lang: Guilty.

Judge Wilson: Well, we're going to proceed to a jury trial, so your plea has to be not guilty. We're going to proceed.

Lang: I mean, I'm still pleading guilty. So I'm not really sure what to do at this point.

Judge Wilson: Pardon me?

Lang: I said, I'm pleading guilty, so I'm not really sure what—

Judge Wilson: Well, your plea has to be not guilty. We've just sworn in a jury. The Court's going to enter a plea of not guilty for you. Okay? You may be seated.

**F. Guilt-Innocence Stage**

The case proceeded to trial. The State presented its case in chief, rested, and closed. Lang did not call any witnesses. In Lang's closing argument for the guilt-innocence stage, the following exchange took place:

Pham: Ladies and gentlemen of the jury, you heard on the video Ms. Lang accepted the responsibility; she said, I drank. She owned up to it that she was intoxicated. You heard in court earlier, when the Judge asked her how do you plead, she said she pled guilty.

Judge Wilson: Mr. Pham, the Court did not accept that guilty plea. That's improper final argument. Jurors are to disregard that statement from the lawyer. The only plea in this case is a plea of not guilty, Mr. Pham.

Pham: We ask that you find her guilty. Thank you.

The jury found Lang guilty, and the case proceeded to the punishment stage.

**G. Punishment Stage**

After the jury was charged on punishment, the jurors retired to deliberate. After deliberating for a while, the jury was excused for the day. On the second day of trial, after announcements but with the jury not present, the following exchange took place:

Judge Wilson: Ms. Lang is present. Lawyers, what I intend to do is appoint a lawyer after the verdict on punishment to represent Ms. Lang on the motion for new trial. Do you object, Ms. Lang?

Lang: No.

Judge Wilson: Okay. So we'll take that up. State, you have a right to object to the motion for new trial. Someone will be appointed and it'll be solely on the issue of punishment.

State: Yes, Your Honor.

The jury returned to the courtroom and delivered its verdict: confinement in the county jail for a term of seven days and a fine of \$1,500. Judge Wilson sentenced Lang in accordance with the jury's verdict. Lang stated she was satisfied with the verdict, and she chose not to appeal.

**H. Motion for New Trial**

Judge Wilson, acting sua sponte, scheduled a post-trial hearing for later that day. His stated purpose was to appoint a different lawyer to represent Lang and grant her a new trial on punishment only. At the hearing, the State's attorneys, Lang, Pham, and several other attorneys appearing on behalf of the Harris County Criminal Lawyers Association Strike Force and the Texas Criminal Defense Lawyers Association Strike Force were present. The following exchange occurred:

Judge Wilson: I'm very concerned about the representation of Ms. Lang in this case. I was very concerned about many items in the handling of this case. This morning when I came, I asked Ms. Lang if she wanted a court-appointed lawyer to look at the possibility of a motion for new trial for punishment purposes only. She—her response was yes.

Lawyers, who wants to go forward now?

Pham: Ms. Lang, did you want the judge to appoint new counsel to you?

Lang: At this time, no.

Judge Wilson: Earlier you indicated “yes”; is that correct?  
Lang: Before the verdict was reached, it was a possibility of “yes.”  
Judge Wilson: Okay.  
Lang: But once it was reached, I am happy with the results and I do not want to change counsel.

Judge Wilson asked if any of the attorneys wanted to present anything to the court. None offered to do so, and Judge Wilson ended the hearing.

### **I. Complaint to the Commission**

Subsequently, the State Commission on Judicial Conduct received an anonymous complaint. The complaint alleged that Judge Wilson refused to accept Lang’s guilty plea—which was made in front of the jury. The complaint also alleged that Judge Wilson instructed the jury to disregard Lang’s plea, and he forced the State and Lang to go to trial on guilt-innocence despite Lang’s desired plea. The complaint further alleged that Judge Wilson ordered the parties back to court the afternoon of trial on the court’s intent to grant a motion for new trial, which neither the State nor Lang had presented. Finally, the complaint alleged that Judge Wilson interfered in Lang’s attorney-client relationship when he tried to replace Pham, Lang’s retained attorney, with court-appointed counsel that Judge Wilson had hand-picked.

### **J. Commission Investigation, Decision**

The Commission investigated the complaint. It asked for, and received, a written response from Judge Wilson. It invited him to appear informally to testify, and he did.

The Commission, after considering the evidence, found that Judge Wilson violated Canon 3B(8) because he failed to accord Lang or her counsel the right to be heard according to law. *See* TEX. CODE JUD. CONDUCT, CANON 3B(8), *reprinted in* TEX. GOV’T CODE ANN., tit. 2., subtit. G, app. B. It concluded that Judge Wilson “should be publicly reprimanded and ordered to obtain additional education.”

Judge Wilson appeals the Commission’s decision.

**REVIEW OF COMMISSION’S DECISION**

The Government Code determines how a Commission’s decision is reviewed. TEX. GOV’T CODE ANN. § 33.034; *In re Keller*, 357 S.W.3d 413, 423–24 (Tex. Spec. Ct. Rev. 2010).

On the petition of the judge whom the Commission has sanctioned, the review is conducted by a special court of review. TEX. GOV’T CODE ANN. § 33.034(c); TEX. RULES REM’L/RET. JUDG. R. 1(g), 9(a). The Commission prepares a charging document, which is presented to the special court of review. TEX. RULES REM’L/RET. JUDG. R. 9(b).

The special court of review consists of “a panel of three court of appeals justices selected by lot by the Chief Justice of the Supreme Court.” TEX. RULES REM’L/RET. JUDG. R. 1(g). “The review by the [special court of review] under this section . . . of a sanction issued in an informal proceeding is by trial de novo as that term is used in the appeal of cases from justice to county court.” TEX. GOV’T CODE ANN. § 33.034(e); *accord In re Keller*, 357 S.W.3d at 424–25.

On appeal from a justice court, “[t]he case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial.” TEX. R. CIV. P. 506.3; *accord In re A.L.M.-F.*, 593 S.W.3d 271, 279 (Tex. 2019).

“[T]he procedure for the review is governed to the extent practicable by the rules of law, evidence, and procedure that apply to the trial of civil actions generally.” TEX. GOV’T CODE ANN. § 33.034(f); *In re Slaughter*, 480 S.W.3d 842, 845 (Tex. Spec. Ct. Rev. 2015).

“At trial, the Commission, through its Examiner, [bears] the burden to prove its charges by a preponderance of the evidence.” *In re Ginsberg*, 630 S.W.3d 1, 6 (Tex. Spec. Ct. Rev. 2018) (citing *In re Slaughter*, 480 S.W.3d at 845).

Because it conducts a trial de novo, “[t]he special court of review is not bound to the Commission’s findings, conclusions, or order.” *In re Keller*, 357 S.W.3d at 424; *see* TEX. R. CIV. P. 506.3 (trial de novo).

“This special court [of review] may dismiss the charges, affirm the Commission’s decision, impose a lesser or greater sanction, or recommend that formal proceedings be instituted by the Commission for censure or removal.” *In re Davis*, 82 S.W.3d 140, 142 (Tex. Spec. Ct. Rev. 2002) (citing TEX. RULES REM’L/RET. JUDG. R. 9(d)).

“The [special court of review’s] decision under this section is not appealable.” TEX. GOV’T CODE ANN. § 33.034(i); *accord In re Davis*, 82 S.W.3d at 143.

#### **LEGAL ERROR, JUDICIAL MISCONDUCT**

In this review by trial de novo, we consider whether Judge Wilson’s alleged legal errors warrant sanctions. To decide that question, we must determine whether Judge Wilson committed the alleged errors of law, and if so, whether any error rose to the level of judicial misconduct. *See In re Ginsberg*, 630 S.W.3d at 6.

“[I]t has long been established that ‘charges involving no more than mistakes of judgment honestly arrived at or the mere erroneous exercise of discretionary power entrusted by law to a district judge’ do not constitute judicial misconduct.” *Id.* at 8 (quoting *In re Laughlin*, 265 S.W.2d 805, 808 (Tex. 1954)).

“For legal error to rise to the level of judicial misconduct,” it must satisfy two prongs. *Id.*

First, the “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.’” *Id.* (quoting *In re Barr*, 13 S.W.3d 525, 545 (Tex. Rev. Trib. 1998)).

Second, “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.*

“Egregious” means “[e]xtremely or remarkably bad; flagrant.” *Egregious*, BLACK’S LAW DICTIONARY (11th ed. 2019); *In re Ginsberg*, 630 S.W.3d at 8.

“Bad faith” means “[d]ishonesty of belief, purpose, or motive.” *Bad faith*, BLACK’S LAW DICTIONARY (11th ed. 2019); *In re Ginsberg*, 630 S.W.3d at 8. Bad faith is also manifest by “[a] specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew or should have known was beyond the legitimate exercise of his authority.” *In re Ginsberg*, 630 S.W.3d at 8 (quoting *In re Barr*, 13 S.W.3d at 534).

#### ALLEGED VIOLATIONS

The Examiners’ Charging Document alleges Judge Wilson violated Canons 2A, 3B(2), 3B(8), and Article V, section 1-a(6) A of the Texas Constitution. The alleged violations all stem from the same set of facts, which are essentially undisputed. We will address Canon 2A first.

#### CANON 2A

The Commission first alleges that Judge Wilson violated Canon 2A. *See* TEX. CODE JUD. CONDUCT, CANON 2A.

##### A. Commission’s Arguments

In its charging document, the Commission recounted (1) the exchanges between Judge Wilson, Pham, and Lang regarding her attempted guilty plea; (2) Judge Wilson’s actions to initiate a motion for new trial and to replace Pham as Lang’s lawyer; and (3) Judge Wilson’s interrupting Pham’s closing argument three times—without any prior objections from the State.

The Commission argued that Judge Wilson’s “conduct was the result of his preconceptions about the ‘correct result’ in the case,” and he improperly interfered in the case.



**B. Judge Wilson’s Arguments**

Judge Wilson argued that he was following the law because Pham’s conduct demonstrated Pham was providing ineffective assistance to Lang, and Lang’s rights had to be protected.

Regarding his actions to replace Pham as Lang’s lawyer, Judge Wilson cited Lang’s initial agreement to replace Pham. *See Gonzalez v. State*, 117 S.W.3d 831, 836–37 (Tex. Crim. App. 2003) (addressing a defendant’s right to counsel of choice).

**C. Applicable Law**

Canon 2A states in part that “[a] judge . . . 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; *accord In re Slaughter*, 480 S.W.3d at 849. “A fair trial in a fair tribunal is a basic requirement of due process.” *Irvin v. Dowd*, 366 U.S. 717, 722 (1961) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).

“Due process requires a neutral and detached hearing body or officer.” *Brumit v. State*, 206 S.W.3d 639, 645 (Tex. Crim. App. 2006) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973)); *see Fernandez v. State*, 597 S.W.3d 546, 559 (Tex. App.—El Paso 2020, pet. ref’d) (“[A] judge should not act as an advocate or adversary for any party.”).

“In the Texas adversarial system, the judge is a neutral arbiter between the advocates; he is the instructor in the law to the jury, but he is not involved in the fray.” *Brown v. State*, 122 S.W.3d 794, 797 (Tex. Crim. App. 2003).

**D. Actions as Advocate**

Here, Judge Wilson joined the fray as Lang’s advocate. Specifically, Judge Wilson sought to replace Pham as Lang’s lawyer and initiate a motion for new trial on Lang’s behalf.

Overriding the strong presumption that Pham’s assistance was effective, *see Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999), Judge Wilson concluded that Pham was providing ineffective assistance, and he tried to arrange for Lang to have a new lawyer. *See Gonzalez*, 117 S.W.3d at 836–37. While the jury was deliberating on punishment, Judge Wilson stated the following: “[W]hat I intend to do is appoint a lawyer after the verdict on punishment to represent Ms. Lang on the motion for new trial.” He continued: “State, you have a right to object to the motion for new trial. Someone will be appointed[,] and it’ll be solely on the issue of punishment.”

But Lang had not filed a motion for new trial, she had not asked Judge Wilson for a new trial, and she had not asked for new counsel. *See Stearnes v. Clinton*, 780 S.W.2d 216, 222 (Tex. Crim. App. 1989) (emphasizing a defendant’s right to retain counsel of his choice and recognizing that an established attorney-client relationship should be protected); *Dunn v. State*, 176 S.W.3d 880, 885 (Tex. App.—Fort Worth 2005, no pet.) (“[I]n a criminal case, only the defendant is authorized to file [a motion for new trial].”).

Nevertheless, Judge Wilson ordered a post-trial hearing for the purpose of replacing Pham, and he implied that he would grant a motion for new trial on punishment. *Cf. Perkins v. Court of Appeals for Third Supreme Judicial Dist. of Tex., at Austin*, 738 S.W.2d 276, 280 (Tex. Crim. App. 1987) (“[A] motion for new trial in a criminal case may be granted only on the timely motion of a defendant [and] a trial judge has no power to grant a new trial on his own motion . . . .”); *In re Duffey*, 459 S.W.3d 216, 221 (Tex. App.—Texarkana 2015, no pet.) (examining *Perkins*).

Judge Wilson’s actions showed he was acting outside his role as a neutral arbiter: He intervened by using the power of his office to achieve his desired result for Lang. *Contra Brumit*, 206 S.W.3d at 645; *Brown*, 122 S.W.3d at 797.

**E. Judge Wilson’s Defense**

Judge Wilson defended his actions to replace Pham as Lang’s lawyer based on Lang’s initial agreement to receive new counsel.

But Lang was a young, first-time criminal defendant. Only a short while earlier, Judge Wilson had rejected Lang’s guilty plea. And when Lang repeated her request to plead guilty, Judge Wilson again denied her plea. It is not surprising, then, that Lang acquiesced to Judge Wilson’s judicial pronouncement that he intended to replace the lawyer she had chosen.

After Lang was sentenced, in the post-trial hearing called by Judge Wilson, Pham asked Lang if she wanted new counsel, and she said no. At that point, Judge Wilson stopped trying to replace Pham as Lang’s lawyer.

**F. Errors of Law**

The requirement for a judge to be a neutral, impartial arbiter is clear; there is no confusion or question as to that fundamental responsibility. *See Brumit*, 206 S.W.3d at 645; *Brown*, 122 S.W.3d at 797; *see also In re Ginsberg*, 630 S.W.3d at 8 (test for judicial misconduct).

Straying from neutrality and spontaneously acting to benefit a party is error; and we find that Judge Wilson erred when he joined the fray as Lang’s advocate. *See Brumit*, 206 S.W.3d at 645; *Brown*, 122 S.W.3d at 797.

The next question is whether Judge Wilson’s errors of law rose to the level of judicial misconduct. *See In re Ginsberg*, 630 S.W.3d at 8; *In re Barr*, 13 S.W.3d at 545.

**G. Judicial Misconduct**

One measure of judicial misconduct is “[a] specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew or should have known was beyond the

legitimate exercise of his authority.” *In re Ginsberg*, 630 S.W.3d at 8 (quoting *In re Barr*, 13 S.W.3d at 534).

Judge Wilson repeatedly stated he had decided that Pham’s assistance was ineffective, and he strongly believed that Lang would have benefited from community supervision.

Consistent with his beliefs, but contrary to the law, Judge Wilson used his judicial authority to try to achieve the result *he* desired for Lang—different counsel and a motion for new trial on punishment so she could receive what *he* believed was a better result. *See In re Ginsberg*, 630 S.W.3d at 8 (misusing judicial powers); *Stearnes*, 780 S.W.2d at 222 (defendant’s choice of counsel); *Dunn*, 176 S.W.3d at 885 (allowing only the defendant to file a motion for new trial).

Judge Wilson knew or should have known that he was not authorized to use the powers of his office to achieve *his* desired result that was inconsistent with Lang’s choices and the law. *See In re Ginsberg*, 630 S.W.3d at 8 (quoting *In re Barr*, 13 S.W.3d at 534).

We find that Judge Wilson’s actions violated his duty to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” *Contra* TEX. CODE JUD. CONDUCT, CANON 2A. Given our finding, we need not address egregiousness or any pattern or practice of legal error.<sup>2</sup> *See In re Ginsberg*, 630 S.W.3d at 8.

We turn now to the Commission’s charge that Judge Wilson violated Canon 3B(8).

### **CANON 3B(8)**

Regarding Canon 3B(8), the Commission contends that Judge Wilson denied Lang “the right to be heard according to law.” *See* TEX. CODE JUD. CONDUCT, CANON 3B(8).

---

<sup>2</sup> There was no evidence that Judge Wilson’s attempts to replace Pham as Lang’s lawyer or his attempt to initiate a motion for new trial on punishment for Lang were “made as part of a pattern or practice of legal error.” *See In re Ginsberg*, 630 S.W.3d at 8.

**A. Parties' Arguments**

The Commission argues that Judge Wilson improperly rejected Lang's guilty plea because she did not claim to be not guilty, she did not claim that she did not understand the charge, there was no question that she was competent, and she was represented by retained counsel. The Commission adds that Judge Wilson persisted in his error by stating he would "appoint a lawyer after the verdict on punishment to represent Ms. Lang on the motion for new trial."

Judge Wilson argues that he rejected Lang's plea because he believed Pham was providing Lang with erroneous advice. He notes that Pham did not timely file a motion for community supervision, Pham filed Lang's plea of not guilty on the day of trial, and Pham did not ask any questions during voir dire. Judge Wilson insists he acted according to the law.

**B. Applicable Law**

"A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law." *See* TEX. CODE JUD. CONDUCT, CANON 3B(8).

In a criminal proceeding, the federal and Texas constitutions guarantee a defendant's right to have assistance of counsel of the defendant's choice. *Gonzalez*, 117 S.W.3d at 836–37; *see also Bowen v. Carnes*, 343 S.W.3d 805, 811 (Tex. Crim. App. 2011). Counsel must be qualified and not barred from the representation, but a trial court may not unreasonably interfere with the defendant's right to choose her own counsel. *Gonzalez*, 117 S.W.3d at 836–37.

Further, a defendant may choose to enter a plea of guilty. TEX. CODE CRIM. PROC. ANN. art. 27.02; *Mendez v. State*, 138 S.W.3d 334, 343 (Tex. Crim. App. 2004).

For a felony case, "[n]o plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary."

TEX. CODE CRIM. PROC. ANN. art. 26.13(b); *accord Burke v. State*, 80 S.W.3d 82, 93 (Tex. App.—Fort Worth 2002, no pet.). *But see Gutierrez v. State*, 108 S.W.3d 304, 309 (Tex. Crim. App. 2003) (“We consistently have held that article 26.13 does not apply to misdemeanor cases.”).

For a misdemeanor case proceeding in open court, either a defendant or her counsel may make her plea of guilty, TEX. CODE CRIM. PROC. ANN. art. 27.02; *Price v. State*, 866 S.W.2d 606, 611 (Tex. Crim. App. 1993), and her “plea of guilty may be accepted without evidence being introduced that it was voluntarily made, and with or without the introduction of any evidence showing the commission of the offense,” *Albrecht v. State*, 424 S.W.2d 447, 448 (Tex. Crim. App. 1968).

If the defendant is mentally competent and her plea is free and voluntary, the court may not sua sponte change the defendant’s plea against her will. *See* TEX. CODE CRIM. PROC. ANN. art. 27.02; *Mendez*, 138 S.W.3d at 343.

**C. Right to be Heard**

For her DWI charge, Lang retained Pham to represent her, and she had the right to choose him as her counsel. *See Bowen*, 343 S.W.3d at 807, 811; *Gonzalez*, 117 S.W.3d at 836–37.

In the complained-of plea colloquy, Judge Wilson assumed that Pham’s assistance was ineffective based on Lang’s guilty plea, her jury request on a not-guilty plea form, her limited participation in voir dire, and her late-filed motion for community supervision.

There was no argument or evidence that Pham was not a licensed attorney in Texas in good standing or that he was disqualified by conflict. *Cf. Gonzalez*, 117 S.W.3d at 836–37.

There was also no argument or evidence by the State or Lang that she was not mentally competent or that her plea was not voluntary. *Cf. TEX. CODE CRIM. PROC. ANN. art. 26.13(b)*;

*Burke*, 80 S.W.3d at 93. *But cf. Gutierrez*, 108 S.W.3d at 309 (noting “article 26.13 does not apply to misdemeanor cases”).

When Judge Wilson asked Lang how she pled, she answered: “Guilty.”

Undeterred, Judge Wilson stated “Well, we’re going to proceed to a jury trial, so your plea has to be not guilty. We’re going to proceed.” *Contra* TEX. CODE CRIM. PROC. ANN. art. 27.02; *Mendez*, 138 S.W.3d at 343.

Despite Judge Wilson’s intervention, Lang responded “I mean, I’m still pleading guilty. So I’m not really sure what to do at this point.”

Judge Wilson persisted: “Well, your plea has to be not guilty. We’ve just sworn in a jury. The Court’s going to enter a plea of not guilty for you.”

Significant here, a trial court has some discretion in accepting or rejecting a guilty plea. *See Gutierrez*, 108 S.W.3d at 309; *Burke*, 80 S.W.3d at 93. And an error of judgment in exercising discretion is not per se judicial misconduct. *In re Ginsberg*, 630 S.W.3d at 8 (reiterating that “the mere erroneous exercise of discretionary power entrusted by law to a district judge’ do[es] not constitute judicial misconduct” (quoting *In re Laughlin*, 265 S.W.2d 805, 808 (Tex. 1954))).

If voluntariness due to ineffective assistance of counsel was Judge Wilson’s concern, he should have questioned Lang about voluntariness, but he did not. *See Burke*, 80 S.W.3d at 93 (voluntariness); *see also Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999) (recognizing the “strong presumption that counsel’s conduct” is not ineffective).

Judge Wilson’s failure to question Lang about voluntariness was not egregious. *Cf. In re Ginsberg*, 630 S.W.3d at 8. It may have been intentional or an oversight, but the decision was not extremely or remarkably bad. *See id.* Further, there is no evidence his decision was “made as part

of a pattern or practice of legal error.” *See id.* And finally, there was no evidence that his failure to inquire into voluntariness was based on dishonesty of belief or purpose. *See id.*

Considering the facts of this case, we find that Judge Wilson’s rejection of Lang’s guilty plea, though error, did not rise to the level of judicial misconduct. *See id.* Accordingly, we find that Judge Wilson’s actions did not violate Canon 3B(8).

We turn now to the Commission’s two remaining charges.

**CANON 3B(2); ARTICLE V, SECTION 1-A(6)**

The Commission’s two remaining charges pertain to Judge Wilson’s professional competence.

Citing Canon 3B(2), the Commission alleges Judge Wilson failed to comply with the law or maintain professional competence in it when he rejected Lang’s guilty plea with the jury present. *See* TEX. CODE JUD. CONDUCT, CANON 3B(2).

Citing section 1-a(6) A of Article V of the Texas Constitution, the Commission alleges Judge Wilson demonstrated official incompetence and engaged in willful conduct inconsistent with the proper performance of his duties by sua sponte ordering a post-trial hearing to replace Pham as Lang’s lawyer and to grant a new trial on punishment only. *See* TEX. CONST. art. V, § 1-a(6).

Judge Wilson responds that he feared Lang’s counsel was providing her with erroneous advice. He notes that “[a] guilty plea is not knowing or voluntary if made as a result of ineffective assistance of counsel.” *E.g., Ex Parte Moussazadeh*, 361 S.W.3d 684, 689 (Tex. Crim. App. 2012) (addressing a guilty plea to a felony offense). He argues that his conduct in refusing to accept Lang’s guilty plea—based on the erroneous instruction of her ineffective counsel—complied with the law.



**A. Applicable Law**

Canon 3B(2) states in part that “[a] judge should be faithful to the law and shall maintain professional competence in it.” TEX. CODE JUD. CONDUCT, CANON 3B(2).

Article V, section 1-a(6) A states that a judge may be disciplined or removed for “incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties.” TEX. CONST. art. V, § 1-a(6).

“[A] member of the Texas judiciary may be found to have violated Article V, § 1-a(6) A of the Texas Constitution by a legal ruling or action made contrary to clear and determined law about which there is no confusion or question as to its interpretation and where the complained-of legal error is egregious, made as part of a pattern or practice of legal error, or made in bad faith.” *In re Barr*, 13 S.W.3d 525, 545 (Tex. Rev. Trib. 1998).

“[A] judge may commit . . . legal error by omission or through incompetence,” *In re Ginsberg*, 630 S.W.3d at 9, but to rise to the level of judicial misconduct, the omission or incompetent 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,” *id.* at 8 (quoting *In re Barr*, 13 S.W.3d at 545).

**B. Question of Professional Competence**

Competence is defined as “[a] basic or minimal ability to do something; adequate qualification,” *Competence*, BLACK’S LAW DICTIONARY (11th ed. 2019), or “the quality or state of having sufficient knowledge, judgment, skill, or strength (as for a particular duty or in a particular

respect),” *Competence*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/competence> (last visited November 18, 2022).

In handling Lang’s case, Judge Wilson conducted pretrial and trial matters. He heard pretrial motions, set the case for trial, called for announcements, conducted voir dire, swore in the jurors, conducted the trial, charged the jury, received the guilt-innocence and punishment verdicts, and sentenced Lang in accordance with the jury’s verdict. The record shows Judge Wilson’s professional competence in conducting these aspects of Lang’s trial.

The Commission argues Judge Wilson’s lack of professional competence was demonstrated by his rejecting Lang’s guilty plea and his attempts to replace Pham.

We agree that Judge Wilson erred in both matters, but the evidence does not show that Judge Wilson lacked a basic ability or sufficient knowledge of the law to properly conduct the trial. Rather, the evidence shows Judge Wilson’s strong desire to get Lang “a better result” overrode his professional competence.

**C. No Judicial Misconduct**

We find that the Commission did not prove by a preponderance of the evidence that Judge Wilson lacked professional competence that rose to the level of judicial misconduct such that he violated Canon 3B(2) or section 1-a(6) A of Article V.

**SANCTION**

Having found that Judge Wilson violated Canon 2A, we now consider the following factors regarding the appropriate sanction:

- (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), *amended*, 744 P.2d 340 (Wash. 1987) (reformatted); *see In re Sharp*, 480 S.W.3d 829, 839 (Tex. Spec. Ct. Rev. 2013) (applying the *Deming* factors); *In re Rose*, 144 S.W.3d 661, 733 (Tex. Rev. Trib. 2004) (same).

The Commission presented no evidence that Judge Wilson's complained-of errors were part of a pattern of conduct or that they were recurring. *See In re Deming*, 736 P.2d at 659 (factors (a), (b)).

The record shows Judge Wilson's actions occurred in the courtroom while he was acting in his official capacity. *See id.* (factors (c), (d)).

Judge Wilson acknowledged that the complained-of acts occurred, but he defends his actions as justified and in compliance with the law. *See id.* (factors (e), (f)).

Although Judge Wilson had been on the bench for less than nine months at the time of this incident, this was the second, though unrelated, complaint against him that the Commission investigated. *See id.* (factors (g), (h)).

Finally, Judge Wilson's acting outside his role as a neutral arbiter—by trying to achieve his preferred outcome for a defendant despite her contrary wishes—reflected negatively on the impartiality and integrity of the judiciary. *See id.* (factors (i), (j)).

Given Judge Wilson’s actions, his unaltered attitude, and the effects of his actions on the parties, the attorneys, the jury, and the public, we conclude that the Commission’s public reprimand was appropriate. *See Sharp*, 480 S.W.3d at 842.

That said, Judge Wilson testified that his term ends on December 31, 2022, but his last day on the bench will be November 30, 2022. He will be replaced by a visiting judge for all of December 2022, at which time his term will end.

Because Judge Wilson is leaving the bench within days of when this opinion issues, we find that the requirement for additional education can be set aside.

### CONCLUSION

We find that the Commission failed to meet its burden to prove by a preponderance of the evidence that Judge Wilson violated Canons 3B(2), 3B(8), or Article V, section 1-a(6) A of the Texas Constitution.

However, we find that Judge Wilson erred when he sought to replace Lang’s chosen counsel and initiate a motion for new trial on punishment.

We also find that Judge Wilson knew or should have known that he was not authorized to use the powers of his office to achieve *his* desired result for Lang that was inconsistent with her choices and the law. *See In re Ginsberg*, 630 S.W.3d at 8 (quoting *In re Barr*, 13 S.W.3d at 534).

We further find that Judge Wilson’s actions violated his duty to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” *Contra* TEX. CODE JUD. CONDUCT, CANON 2A.

Accordingly, “to deter similar misconduct by a judge or judges in the future, to promote proper administration of justice, and to reassure the public that the judicial system of this state neither permits nor condones misconduct,” TEX. RULES REM’L/RET. JUDG. R. 1(e); *accord In re*

*Davis*, 82 S.W.3d 140, 143 (Tex. Spec. Ct. Rev. 2002), we affirm the portion of the Commission's June 9, 2022 Public Reprimand and Order of Additional Education that includes a public reprimand of Judge Wilson, but we set aside any requirement for Judge Wilson to complete additional education.

A handwritten signature in black ink, reading "Patricia O'Connell Álvarez". The signature is written in a cursive, flowing style with a large initial "P".

---

Patricia O'Connell Álvarez, Presiding Justice  
Special Court of Review Panel