

**Opinion Issued November 17, 2022**



**DOCKET NO. SCR 22-0001**

**SPECIAL COURT OF REVIEW**

**IN RE INQUIRY CONCERNING HONORABLE AUDREY MOOREHEAD**

**CJC NO. 21-0784**

---

**OPINION**

This special court of review<sup>1</sup> was assigned to conduct a trial de novo of a public admonition issued by the State Commission on Judicial Conduct against the Honorable Audrey Moorehead (“respondent”), Judge of Dallas County Criminal Court at Law No. 3, Dallas, Dallas County, Texas. *See* TEX. GOV’T CODE § 33.034(e)(2) (providing that review of a sanction issued in an informal proceeding is by trial de novo). Having conducted a trial de novo, we conclude the commission failed to meet its burden of proving the charged conduct by a preponderance of the evidence. We, therefore, dismiss the commission’s public admonition and find respondent not guilty as charged in this proceeding.

---

<sup>1</sup> The special court of review consists of the Honorable Liza A. Rodriguez, Justice of the Fourth Court of Appeals, presiding by appointment; the Honorable Veronica Rivas-Molloy, Justice of the First Court of Appeals, participating by appointment; and the Honorable Matt Johnson, Justice of the Tenth Court of Appeals, participating by appointment.

## FACTUAL AND PROCEDURAL BACKGROUND

The commission's public admonition of respondent stems from a motor vehicle accident that led to respondent's arrest for Driving While Intoxicated ("DWI"). On December 8, 2020, at around 10:00 p.m., respondent was driving a sports utility vehicle when she lost control and the vehicle hit a light pole. No one else was involved in the collision. An officer arrested respondent for DWI at the accident scene. Respondent's arrest was publicized by the Dallas media, and she was eventually charged by indictment with one count of misdemeanor DWI.<sup>2</sup>

As to the genesis of this matter, the record indicates that the commission initiated a complaint and commenced informal proceedings against respondent. To that end, in January 2022, a written communication was sent to but not received by respondent. Thereafter, respondent received two letters of inquiry from the commission, which she answered on March 9, 2022, and April 9, 2022. On April 6, 7, and 19, the commission held meetings, where it reviewed its complaint against respondent. On May 31, 2022, respondent filed an amended and supplemental answer to the commission's second letter of inquiry, a response to the commission's tentative vote to issue a public admonition, and confirmation of her desire to appear at a hearing before the commission.

On June 8, 2022, before respondent's DWI charge was resolved, the commission held a hearing at which respondent testified. The next day, the commission issued a public admonition<sup>3</sup> against respondent "for operating a motor vehicle after consuming alcohol and causing a single-car accident, conduct which resulted in the judge being arrested and indicted on a misdemeanor

---

<sup>2</sup> The record reflects that an indictment in a misdemeanor case is unusual.

<sup>3</sup> The commission is authorized to issue public or private sanctions. When a public sanction is issued, "all information considered by the Commission, including the judge's name, is made public." On the other hand, "[w]hen the Commission elects to issue a private sanction, the judge's name and all information considered by the Commission remain confidential." STATE COMM'N ON JUDICIAL CONDUCT ANN. REP. 15 (2021).

DWI charge and garnering negative media attention, and which constituted willful conduct that cast public discredit upon the judiciary, in violation of Article V, Section 1-a(6)(A) of the Texas Constitution.” Respondent was not immediately notified of the commission’s public admonition but instead learned about it a week later when she received a media inquiry.

Thereafter, on June 29, 2022, respondent pled no contest to the misdemeanor charge of DWI and was placed on deferred adjudication community supervision for a period of twelve months.

Invoking her right of review of the commission’s public admonition, respondent requested the appointment of a special court of review to hear and determine this matter. *See* TEX. GOV’T CODE § 33.034(b). The chief justice of the Texas Supreme Court appointed this special court of review, and the commission filed its charging document. After granting one continuance, this special court of review convened and held a trial de novo on September 19, 2022. *See id.* § 33.034(h).

At the trial de novo, the commission and respondent were both represented by counsel. Prior to opening statements, counsel entered into “Agreed Stipulations of Fact” and agreed to the admission of certain documents into evidence. The commission did not call any witnesses to testify. Respondent was the only witness to testify and was subjected to cross-examination as well as questions posed by the panel. Finally, counsel presented closing arguments and answered questions from the panel. After trial, counsel submitted further arguments in their post-trial briefs. In making our determination, we have considered the trial evidence and counsel’s arguments.

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

“The function of the State Commission on Judicial Conduct is not to punish; instead, its purpose is to maintain the honor and dignity of the judiciary and to uphold the administration of

justice for the benefit of the citizens of Texas.” *In re Lowery*, 999 S.W.2d 639, 648 (Tex. Rev. Trib. 1998, appeal denied). Similarly, the function of a special court of review is not to punish, but to provide guidance to judges and protection to the public. *In re Davis*, 82 S.W.3d 140, 150 (Tex. Spec. Ct. Rev. 2002).

Article V, Section 1-a(6)(A) of the Texas Constitution provides that a judge may be disciplined for “willful or persistent conduct that is clearly inconsistent with the proper performance of his [or her] duties or casts public discredit upon the judiciary or administration of justice.” TEX. CONST. art. V, § 1-a (6)(A). The Texas Constitution further provides that after receipt of a written complaint and an investigation, the commission 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 such a sanction, the judge may ask the chief justice of the supreme court to appoint a special court of review to review the commission’s sanction. TEX. GOV’T CODE § 33.034(b); TEX. RULES REM’L/RET. JUDG. R. 9(a). Review 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 § 33.034(e)(2).

After a special court of review is appointed, the commission files a charging document containing its allegations of judicial misconduct against the judge. The special court of review holds a trial de novo and renders its decision by written opinion. *Id.* § 33.034(h). The procedure employed by the special court of review “is governed to the extent practicable by the rules of law, evidence, and procedure that apply to the trial of civil actions generally.” *Id.* § 33.034(f). “[T]he commission has the burden of proof and [] the standard is by a preponderance of the evidence, as is applicable to the trial of civil actions generally.” *In re Hecht*, 213 S.W.3d 547, 560 (Tex. Spec. Ct. Rev. 2006). “[T]he commission must prove each element of a charge by a preponderance of

the evidence.” *Id.* “The Special Court of Review considers the case from the beginning, as though it were standing in the place of the Commission (though the Special Court of Review is made aware of the Commission’s decision).” STATE COMM’N ON JUDICIAL CONDUCT ANN. REP. 17 (2021). A special court of review may dismiss the charges, affirm the commission’s decision, impose a lesser or greater sanction, or order the commission to file formal proceedings. TEX. RULES REM’L/RET. JUDG. R. 9(d); *In re Davis*, 82 S.W.3d 140, 143 (Tex. Spec. Ct. Rev. 2002).

### THE CHARGE

In this case, the charging document filed by the commission states that the relevant ethical standard is Article V, Section 1-a(6)(A) of the Texas Constitution, which provides, in relevant part, that a judge shall not engage in “willful or persistent conduct that is clearly inconsistent with the proper performance of his duties *or* casts public discredit upon the judiciary or administration of justice.” TEX. CONST. ART. V, § 1-a(6)(A) (emphasis supplied). As to the specific misconduct charged, the charging document alleges that respondent’s “behavior, namely operating a motor vehicle after consuming alcohol, causing a single[-]car accident, and refusing to cooperate in the subsequent investigation, which resulted in the judge being arrested and indicted on a misdemeanor DWI charge and garnering negative media attention, constitutes willful conduct that cast public discredit on the judiciary, in violation of Article V, Section 1-a(6)(A) of the Texas Constitution.” Notably, respondent was not charged with engaging in persistent conduct, nor was she charged with engaging in conduct clearly inconsistent with the proper performance of her duties. Therefore, to the extent the commission urges us to sanction respondent because she engaged in conduct inconsistent with the proper performance of her duties, its argument exceeds the scope of the charging document.<sup>4</sup>

---

<sup>4</sup> The commission argues that respondent engaged in “willful conduct that is clearly inconsistent with the proper performance of her duties” in its pre-trial and post-trial briefing.

## TRIAL DE NOVO

### *Opening Statements*

At the trial de novo before this court, each side made opening statements. The commission recounted the evidence the commission relied on in reaching its decision to issue a public admonition. Specifically, the commission pointed to evidence that on December 8, 2020, respondent consumed alcohol before operating her vehicle and crashed her vehicle into a light pole, totaling her car. At the accident scene, a police officer attempted to conduct an HGN test, but respondent refused to comply, claiming that the officer was administering the test improperly. The officer arrested respondent for DWI and obtained a warrant to draw respondent's blood. When respondent's blood was drawn and tested two hours after her arrest, the result of the test showed an alcohol concentration of 0.105. Thereafter, respondent was indicted by a grand jury for misdemeanor DWI, and her arrest and indictment were publicized by the Dallas media. According to the commission, it properly concluded, based on this evidence, that respondent "engaged in willful conduct that cast public discredit upon the judiciary [ ]or the administration of justice in violation of Article 5, Section 1-a[(6)(A)] of the Texas Constitution."

In his opening statement, respondent's counsel focused on procedural and substantive concerns involving the commission's issuance of the public admonition. As to the procedural concerns, counsel pointed out that the commission released the public admonition within twenty-four hours of its June 8, 2022 hearing, and that respondent was not made aware of the sanction until about a week later when she received a media inquiry. According to respondent's counsel, the commission's premature release of the public admonition to the media deprived respondent of the opportunity to ask the commission for reconsideration before the matter was made public.

Additionally, respondent's counsel expressed concerns about the commission's decision to release its public admonition before respondent's criminal case was resolved. According to respondent's counsel, this decision "implicate[d] constitutional rights, [including] the presumption of innocence." Respondent's counsel emphasized that respondent's case was the only case he found in which the commission conducted a hearing *before* the judge's underlying criminal case was resolved. Respondent's counsel argued that the timing of the release of the commission's public admonition created a dilemma for respondent and was a factor in her decision to plead no contest in her DWI case.

As to the substantive arguments, respondent's counsel argued that the evidence would show that the accident occurred because respondent was driving a new vehicle with automatic correction and braking; therefore, respondent was unfamiliar with these functions. Respondent's counsel further argued that respondent's DWI case was "far from a slam dunk" because there was no evidence of drinking close to the time of driving, and virtually no field sobriety tests were performed.

### ***The Commission's Evidence***

At the trial de novo, the commission primarily relied on the "Agreed Stipulations of Fact," which stated:

1. At all times relevant hereto, [respondent] was the presiding judge of the Dallas County Criminal Court at Law No. 3, Dallas County, Texas.
2. On December 8, 2020, [respondent] consumed vodka more than 3 hours prior to operating her vehicle, hit a light pole and totaled her car, and was arrested for [DWI].
3. The arresting officer attempted to conduct a Horizontal Gaze Nystagmus ("HGN") field sobriety test, but respondent refused to comply claiming the officer was administering the test improperly.

4. After the police obtained a warrant, [respondent's] blood was drawn approximately two hours after her arrest and the results of the test showed an alcohol concentration of 0.105.
5. On August 25, 2021, [respondent] was indicted by a grand jury on a misdemeanor DWI charge in Case No. M21-04193.
6. On June 29, 2022, [respondent] entered a plea of no contest in Case No. M21-04193 and was placed on deferred adjudication community supervision.
7. [Respondent's] arrest was publicized in the Dallas media.

The commission also relied on documentary evidence consisting of: (1) its public admonition against respondent; (2) one article about respondent's December 8, 2020 arrest; (3) respondent's written responses to the commission's letters of inquiry; (4) the transcript of the commission's hearing; (5) the indictment charging respondent with DWI; and (6) the June 29, 2022 deferred adjudication judgment entered in respondent's misdemeanor DWI case.

Finally, the commission cross-examined respondent, eliciting testimony about respondent's interaction with the police officer at the accident scene. On cross-examination, respondent testified that: (1) it was obvious to her that the officer was not concerned about her well-being at the accident scene, (2) she knew early on that the officer was going to arrest her because of the way he approached her and his attitude, (3) the only field sobriety test the officer asked her to perform was the HGN test, (4) the officer did not mention the walk and turn or the one-leg stand field sobriety tests, (5) she initially declined to participate in the HGN test, but the second time the officer asked her she acquiesced, (6) she stopped the HGN test because the officer was not performing it properly, (7) the officer seemed annoyed that she even said the term "Horizontal Gaze Nystagmus," (8) the officer did not ask her to do any other field sobriety tests, (9) she did not think that the officer ever asked her to take a breath test, and (10) the officer never asked her to provide a voluntary sample of her blood.



### *Respondent's Evidence*

Respondent testified on her own behalf.<sup>5</sup> Respondent explained that she currently serves as the judge of Dallas County Criminal Court No. 3, and she handles all types of misdemeanor cases, including DWI cases. At the time of the trial de novo, respondent was in the fourth year of her first term. According to respondent, since the date of her arrest, December 8, 2020, no one—not the local district attorney nor any other lawyer appearing in her court—had asked her to recuse herself from a case.

Respondent testified that prior to becoming a judge, she had been a practicing attorney for about fifteen years, handling a variety of cases. In particular, she had extensive experience in defending DWI cases and had taught seminars on defending people accused of DWI.

Respondent further testified that she asked the commission to postpone the June 8, 2022 hearing until after discovery was completed in her DWI case, but her request was denied. Nevertheless, she testified before the commission, waiving her Fifth Amendment right against self-incrimination. The commission issued its public admonition on June 9, 2022, but neither respondent nor her counsel was immediately notified.

About three weeks after the public admonition was released, respondent entered a no-contest plea in her DWI case instead of taking the case to trial. Respondent testified that her attorney was “very insistent that [her case] was a triable case.” Before the public admonition was released, respondent was “strongly considering going to trial” while “weighing the issue of how publicity would impact that decision.” However, the commission’s public admonition caused respondent to question whether she should proceed to trial in the DWI case. Respondent believed that the media publicity generated by a trial would have been “significantly increased, especially

---

<sup>5</sup> Respondent’s testimony at the trial de novo was essentially the same as her testimony at the original hearing before the commission.

because there was already a public sanction by the [c]ommission.” Respondent explained that she pleaded no contest “because after a public [sanction] was out there, it really impacted [her] ability to . . . negotiate [her] case and work with the State because there [was] essentially a finding of guilt . . . that was in the public arena.”

As to the events that transpired on December 8, 2020, respondent testified that she had gone to a restaurant to visit with a friend and watch a football game. Respondent explained that she consumed one alcoholic beverage early in the evening. Respondent left the restaurant after the football game ended, which was around 10:00 p.m. Respondent disputed that the accident was caused by her consumption of alcohol.

Respondent explained that the vehicle she was driving on the night of the accident was new, large, and hard to drive because she was unfamiliar with it. The vehicle “was extremely technologically advanced.” According to respondent, the vehicle had an “auto correct [function], so the steering wheel would jerk” when changing lanes, and it had an auto acceleration function that affected the braking system. Respondent explained that when the auto acceleration system was engaged, the vehicle accelerated quickly, but it did not brake quickly.

Respondent recounted the circumstances surrounding the accident. Shortly after respondent drove out of the restaurant’s parking lot, she saw another vehicle making a U-turn and she thought that the vehicle was going to veer into her lane. When respondent tried to take evasive action, her vehicle moved forward very quickly. Respondent tried to hit the brakes, but the brakes did not engage quickly, and she lost control of the vehicle. The vehicle then went across the median and came to a stop when it hit a light pole.

Respondent further testified that when the police arrived at the accident scene, an officer approached her while she was standing outside of her vehicle. The officer stated that he could

smell the odor of alcohol. Respondent was surprised by the officer's statement because the air was full of fumes from the collision. Respondent did not tell the officer that she was a judge, but she surmised the officer came to this conclusion because the address listed on her driver's license was that of the courthouse. According to respondent, the officer had a "joking attitude" about her being a judge and that made her feel uncomfortable.

Respondent testified the officer asked her to perform the HGN test, to which she agreed. Respondent was very familiar with the proper technique for administering the HGN test because of her past work as a criminal defense lawyer. Respondent began to perform the HGN test, but she noticed that the officer was not administering it properly and she told him so. Immediately thereafter, the officer arrested her. Respondent also testified that the officer neither asked her to perform any other field sobriety tests, nor asked her to consent to a breath test or a blood test. The officer obtained a sample of her blood based on a warrant. She estimated that her blood sample was drawn about two hours after the accident. The results showed an alcohol concentration of 0.105, which surprised her. Respondent further testified that she has two physical conditions that affect how her body absorbs food and alcohol, and that these conditions would impact the results of a blood alcohol test.

In her testimony, respondent also explained that after the accident, she voluntarily participated in an alcohol and drug evaluation, which showed that she did not have an alcohol or a drug problem. She did the evaluation for multiple reasons: she wanted to be prepared for any potential inquiries about substance abuse issued raised by the commission or the court in the DWI case; and she also "wanted to make sure for [her] own personal edification and confirmation that there were no significant issues in that area for [her]."

Finally, respondent presented documentary evidence, which consisted of: (1) six private sanctions administered by the commission against other judges after they had pled guilty or no contest to DWI or public intoxication charges; (2) three public sanctions administered by the commission against other judges after they had pled guilty or no contest to DWI; and (3) the State Commission on Judicial Conduct's 2021 Annual Report.

### ***Respondent's Arguments***

During closing arguments, respondent's counsel highlighted one of the "procedural oddities" in this case. Counsel argued that, in his experience, respondent's DWI case was "exactly the kind of case that most often goes to trial" "because it could go either way." Here, respondent was "strongly considering going to trial," but her decision was affected by the release of the commission's public admonition and the media publicity that followed. According to her counsel, respondent was concerned that a trial in her DWI case would have increased the media publicity exponentially. Further, counsel argued that by entering into a no-contest plea, respondent avoided "bringing more attention to the situation and more negativity on the judiciary."

Counsel then focused on the nine prior commission decisions, involving judges who faced criminal charges for DWI or public intoxication. Counsel argued that the commission's decision in respondent's case was inconsistent with its previous decisions in similar cases, emphasizing that in the previous cases, the commission refrained from holding hearings and issuing sanctions until *after* the disposition of the judge's criminal case. Additionally, counsel highlighted previous cases where judges received only private sanctions even after pleading guilty to DWI.<sup>6</sup>

---

<sup>6</sup> We note that at the time of the commission's sanction, respondent had not entered a plea.

Based on the foregoing, counsel asked this court to set aside the commission’s public admonition and dismiss the complaint against respondent. Alternatively, counsel asked this court to issue a private admonition.

### ***The Commission’s Arguments***

The commission acknowledged the procedural problems with this case. First, the commission explained that the standard practice is to notify the judge or her attorney of its decision to sanction ten days before notifying the media. According to the commission, “[I]f everyone is doing it the way it should work, [it] should not happen that the media lets the Judge know that [a sanction] has happened.”<sup>7</sup> Second, the commission agreed that respondent’s counsel was “absolutely correct” and that, historically, the commission waited until a DWI case was resolved before issuing a sanction against a judge. The commission further explained that the legislature had imposed new deadlines for resolving complaints and that the commission was currently under “a great deal of pressure from the legislature” to reduce the time it takes to process complaints. However, in response to questioning from the panel, the commission acknowledged that respondent’s case was not subject to these new time constraints.

Next, the commission stated:

I’d like to talk a little bit about what the [c]ommission found that [respondent’s] conduct did. The [c]ommission did not find that [respondent] violated the law. The [c]ommission did not find that [respondent] was intoxicated or drove while intoxicated. *The [c]ommission found that the conduct that [respondent] engaged in on that date, that she admitted to during her testimony, which involved drinking before driving, however many hours before, it involved her not having field sobriety tests, for whatever reason that might be. Those were the factors that [the commissioners] took into consideration.*

---

<sup>7</sup> The commission’s annual report confirms this procedure: “If the Commission chooses to issue a public sanction, an order describing the Commission’s findings is prepared and distributed to the respondent judge, with a copy provided to the complainant. The order is then publicly disseminated to ensure public awareness.” STATE COMM’N ON JUDICIAL CONDUCT ANN. REP. 13 (2021).

And in their conclusion decided that she violated the Texas Constitution’s prohibition on engaging in willful conduct that cast public discredit on the judiciary or on the administration of justice. *I think that it’s important to realize that [the commissioners] did not find that she violated the law—the DWI law.*

(emphasis supplied).

It was further explained that in deciding to issue a public sanction, the commission considered the well-established *Deming* factors<sup>8</sup> and, based on respondent’s testimony at the commission hearing, the commission “did not feel that [respondent] was taking responsibility for her own conduct on [the day of the accident] and I think that weighed in their decision.” In other words, respondent’s failure to “take responsibility” was a significant factor in the commission’s decision to issue a public admonition.<sup>9</sup>

In response to respondent’s argument that her sanction was harsher than sanctions administered to similarly situated judges, the commission argued that the commission considers each complaint on a case-by-case basis and the circumstances of each case are unique. The commission explained that a variety of circumstances might influence the commission to issue a private sanction instead of a public sanction. These circumstances include the judge no longer

---

<sup>8</sup> The commission and courts consider the following “*Deming* factors” to determine an appropriate sanction for judicial misconduct: (1) whether the misconduct is an isolated instance or evidenced a pattern of conduct; (2) the nature, extent and frequency of occurrence of the acts of misconduct; (3) whether the misconduct occurred in or out of the courtroom; (4) whether the misconduct occurred in the judge’s official capacity or in his private life; (5) whether the judge has acknowledged or recognized that the acts occurred; (6) whether the judge evidenced an effort to change or modify his conduct; (7) the length of service on the bench; (8) whether there have been prior complaints about this judge; (9) the effect the misconduct has upon the integrity of and respect for the judiciary; and (10) the extent to which the judge exploited his position to satisfy her personal desires. *See In re Sharp*, 480 S.W.3d 829, 839 (Tex. Spec. Ct. Rev. 2013) (citing *Matter of Deming*, 736 P.2d 639, 659 (Wash. 1987)).

<sup>9</sup> Both at trial and in its post-trial briefing, the commission argued that a public admonition was warranted based on a single *Deming* factor—that respondent allegedly refused to acknowledge her actions and take personal responsibility for them. We note, however, that many of the other *Deming* factors weigh against imposing a public admonition against respondent. For example, respondent’s accident and her arrest were not part of a pattern of conduct, but an isolated incident. During respondent’s interaction with the officer, respondent did not use her position as a judge to avoid arrest. Finally, the conduct in question did not occur inside of the courtroom or in respondent’s official capacity, it occurred outside of the courtroom and in respondent’s private life.

serving on the bench, or the judge acknowledging and accepting responsibility for the conduct in question.

Ultimately, the commission asked this court to issue “at least” a public admonition to respondent.

#### ANALYSIS

We begin by briefly addressing respondent’s procedural concerns, which the commission acknowledged during closing arguments. First, in a departure from standard practice, the commission issued a public sanction against respondent before her DWI case was resolved. Second, in another departure from standard practice, the commission notified the media of its public admonition of respondent prior to notifying respondent or her counsel. We find both of these departures from standard practice troubling. We agree that the timing of the commission’s public admonition created a serious dilemma for respondent with respect to her decision to proceed to trial or enter a plea in her DWI case.

We now turn to the substantive issues before us. In its charging document, the commission alleged that respondent’s “behavior, namely operating a motor vehicle after consuming alcohol, causing a single car accident, and refusing to cooperate in the subsequent investigation, which resulted in the judge being arrested and indicted on a misdemeanor DWI charge and garnering negative media attention, was willful conduct that cast discredit upon the judiciary or the administration of justice.” Therefore, the commission was required to prove, by a preponderance of the evidence, the following elements:

- (1) respondent operated a motor vehicle after consuming alcohol;
- (2) she caused a single-car accident; and
- (3) she refused to cooperate in the investigation of the accident;

(4) her conduct resulted in respondent being arrested and indicted on a misdemeanor DWI charge and garnered negative media attention;

(5) her conduct was willful; and

(6) her conduct cast discredit on the judiciary or the administration of justice.

Our analysis focuses on elements one, two, and three of the charge. We recognize that these elements of the charge—the allegations regarding respondent’s conduct—are plead in the conjunctive, meaning that the commission was required to prove all of them. *See Premier Learning Acad., Inc. v. Tex. Educ. Agency*, 521 S.W.3d 439, 446 (Tex. App.—Austin 2017, pet. denied) (holding that when a statute’s conditions “are all in the conjunctive—they must all be satisfied”); *Powers v. Standard Acc. Ins. Co.*, 188 S.W.2d 239, 241 (Tex. Civ. App.—Dallas 1945), *rev’d on other grounds*, 191 S.W.2d 7 (1945) (“If the pleader means the conjunctive, the word ‘and’ should [be] used, but if he means to express the disjunctive, he should [] employ[] the word ‘or’.”).

In its post-trial briefing, the commission argues that it met its evidentiary burden based on evidence that: (1) respondent consumed vodka prior to operating her vehicle, (2) respondent was arrested for DWI after hitting a light pole with her car, (3) respondent refused to complete the HGN field sobriety test after telling the officer he was administering the test improperly, (4) respondent’s blood alcohol level was 0.105 five hours after she had consumed alcohol, (5) respondent was indicted for a misdemeanor DWI charge, and (6) respondent pleaded no-contest to DWI and was placed on deferred adjudication community supervision. Curiously, the argument in the commission’s post-trial briefing is largely premised on respondent’s arrest, indictment, and the outcome of her DWI case. We find the commission’s post-trial arguments difficult to reconcile with its position at the trial de novo, where it did not charge respondent with violating the law, and emphasized in closing arguments that its public sanction was not based respondent violating the law or driving while intoxicated.



Contrary to the approach taken in the commission’s post-trial briefing, our analysis focuses on the conduct alleged in the commission’s charging document and the evidence, if any, that corresponds to the charged conduct. As to element one, there was evidence that respondent operated a motor vehicle after consuming alcohol. The stipulated facts stated that respondent consumed alcohol more than three hours before operating her vehicle. Additionally, respondent testified that at the restaurant, she visited with a friend during a football game. Respondent further testified that she consumed alcohol very early in the evening. After the game ended, she got into her vehicle and started driving. Based on this evidence, we find that the commission proved, by a preponderance of the evidence, that respondent operated a motor vehicle after consuming alcohol.<sup>10</sup>

As to element two, the only evidence about the actual cause of the accident was presented by respondent. The commission was afforded the opportunity to prove its allegation that respondent caused the accident, but it did not present any evidence on this topic. Respondent testified that the accident occurred when she took evasive action to avoid another vehicle veering into her lane, the vehicle’s auto-correction and braking systems engaged, she lost control of the vehicle, and the vehicle hit a light pole. The commission presented no controverting evidence. Accordingly, we conclude that the commission failed to prove, by a preponderance of the evidence, that respondent caused the accident.

As to element three, the stipulated facts stated that the arresting officer attempted to conduct an HGN field sobriety test, but respondent refused to comply because she claimed the

---

<sup>10</sup> As respondent testified at trial, the law does not prohibit a driver from operating of a motor vehicle after consuming alcohol. Rather, the law prohibits one from driving while intoxicated. *See* TEX. PENAL CODE § 49.04. “Intoxication” is defined as “not having the normal use of mental or physical faculties by reason of the introduction of alcohol . . . into the body;” or having an alcohol concentration of 0.08 or more.” *Id.* § 49.01(2). As previously stated, the commission did not charge respondent with violating the law, and it emphasized in closing arguments that its sanction was not based on findings that respondent violated the law or that she drove while intoxicated.

officer was administering the test improperly. In her testimony, respondent explained that she initially declined to take the HGN test, but she later acquiesced. Respondent began to participate in the HGN test, but then noticed that the officer was not administering the test correctly. Respondent told the officer he was not administering the HGN test properly and stopped participating in the test for this reason. At trial, respondent, a former criminal defense lawyer, explained why, in her opinion, the officer was not administering the HGN test properly. Respondent further testified that she was never asked to perform any other field sobriety tests, was never asked to perform a breathalyzer test, and was never asked to provide a voluntary sample of her blood for testing. Respondent's testimony shows that the investigation was minimal and that during this time she provided some level of cooperation. Again, the commission presented no controverting evidence. Accordingly, we conclude that the commission failed to prove, by a preponderance of the evidence, that respondent refused to cooperate in the investigation.<sup>11</sup>

Having determined that the commission failed to prove, by a preponderance of the evidence, each and every element alleged in the charging document, we dismiss the commission's public admonition and find respondent not guilty as charged in this proceeding.

#### **SPECIAL COURT OF REVIEW<sup>12</sup>**

DO NOT PUBLISH – *See* TEX. RULES REM'L/RET. JUDG. R. 9(e).

---

<sup>11</sup> We further note that the commission's public admonition included a finding that respondent "declined to voluntarily provide a sample of her blood for testing, which was eventually obtained through a warrant." However, the record is devoid of any evidence that respondent was asked to voluntarily provide a sample of her blood for testing and that she declined to do so.

<sup>12</sup> The special court of review consists of the Honorable Liza A. Rodriguez, Justice of the Fourth Court of Appeals, presiding by appointment; the Honorable Veronica Rivas-Molloy, Justice of the First Court of Appeals, participating by appointment; and the Honorable Matt Johnson, Justice of the Tenth Court of Appeals, participating by appointment.

**Judgment Issued November 17, 2022**



**DOCKET NO. SCR 22-0001**

**SPECIAL COURT OF REVIEW**

**IN RE INQUIRY CONCERNING HONORABLE AUDREY MOOREHEAD**

**CJC NO. 21-0784**

---

**JUDGMENT**

Having considered the charge, the evidence, the arguments of counsel, and the parties' pre-trial and post-trial briefing, this special court of review finds that the commission did not meet its burden to prove, by a preponderance of the evidence, the elements of the charge in this case. We, therefore, dismiss the State Commission on Judicial Conduct's public admonition in CJC No. 21-0784, *In re Inquiry Concerning Honorable Audrey Moorehead*, and find the Honorable Audrey Moorehead not guilty as charged in this proceeding.

**SPECIAL COURT OF REVIEW<sup>13</sup>**

---

<sup>13</sup> The special court of review consists of the Honorable Liza A. Rodriguez, Justice of the Fourth Court of Appeals, presiding by appointment; the Honorable Veronica Rivas-Molloy, Justice of the First Court of Appeals, participating by appointment; and the Honorable Matt Johnson, Justice of the Tenth Court of Appeals, participating by appointment.