



**SCR 23-0001**  
**SPECIAL COURT OF REVIEW**

**IN RE INQUIRY CONCERNING THE HONORABLE GRACE UZOMBA**  
**CJC No. 21-0360**

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Before this Review Tribunal<sup>1</sup> is an appeal from a Public Reprimand issued on June 28, 2023 by the Texas State Commission on Judicial Conduct (the “Commission”) against Respondent, the Honorable Grace Uzomba, former judge of the County Court at Law No. 2 in Bexar County.<sup>2</sup> The Commission’s Public Reprimand concluded that Respondent failed to (1) timely execute the business of the court regarding compliance hearings, (2) tend to records she alone must review and sign in order for the judicial records to be properly kept, and (3) make recordings of the compliance hearings. The Commission’s Public Reprimand further concluded that:

Judge Uzomba’s failure in this respect constituted willful and/or persistent failure to timely execute the business of the court that is clearly inconsistent with the proper performance of her duties and that cast public discredit upon the judiciary or the administration of justice, in violation Article V, Section 1-a(6)A of the Texas Constitution.

Respondent timely appealed. *See* TEX. GOV’T CODE ANN. § 33.034 (West 2023) (providing the procedure to appeal Commission sanctions). The Commission filed Examiners’ Charging

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<sup>1</sup>This Special Court of Review consists of the Honorable John M. Bailey, Chief Justice of the Eleventh Court of Appeals, presiding by appointment; the Honorable Ken Molberg, Justice of the Fifth Court of Appeals, participating by appointment; and the Honorable April L. Farris, Justice of the First Court of Appeals, participating by appointment.

<sup>2</sup>All references in this opinion to “the Public Reprimand” are solely to the reprimand issued by the Commission on June 28, 2023, in CJC No. 21-0360.

Document on August 18, 2023.<sup>3</sup> The Charging Document contained a single charge that essentially mirrored the conclusions in the Public Reprimand:

**Charge I: Art. V, § 1-a(6)A**

Judge Uzomba’s failure to: (1) timely execute the business of the court regarding community supervision compliance hearings; (2) tend to court records she alone must review and sign in order for the judicial record to be properly kept; and (3) make recordings of compliance hearings constituted willful and persistent failures to timely execute the business of the court that are clearly inconsistent with the proper performance of the judge’s duties and cast public discredit upon the judiciary and the administration of justice.

As set forth herein, the Commission sought to expand the scope of the charges against Respondent less than seventy-two hours before the trial. It did so without seeking to amend the Charging Document. We conclude that the Commission was not permitted to expand the charges brought against Respondent in excess of the single charge alleged in the Charging Document.

With respect to the sole charge alleged in the Charging Document, we find that the Commission failed to prove that Respondent committed willful or persistent conduct that was clearly inconsistent with the proper performance of her duties or cast public discredit upon the judiciary or administration of justice. *See* TEX. CONST. art. V, § 1-a(6). Thus, we conclude that the Commission failed to prove that Respondent violated the Texas Constitution as alleged. We vacate the Commission’s Public Reprimand and dismiss the charges against Respondent without sanctions.

*Ruling on Respondent’s Objections to the Additional Charges*

*Procedural History*

At the outset of this proceeding, the Review Tribunal entered an order setting this matter for a single-day trial on November 16, 2023. This order set a deadline of November 13, 2023, for the parties to file a pre-trial submission memorandum to include their anticipated evidence and relevant legal authority. The Commission filed the Examiners’ Pre-Trial Memorandum on November 13, 2023. The Commission added a new factual allegation in its Pre-Trial Memorandum—that Respondent failed to maintain a professional work environment in her court. Additionally, the Commission alleged for the first time in this proceeding that Respondent violated provisions of the Texas Code of Judicial Conduct. *See* Tex. Code Jud. Conduct, *reprinted in* TEX.

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<sup>3</sup>All references in this opinion to “the Charging Document” are solely to the charging document filed by the Commission on August 18, 2023.

GOV'T CODE ANN., tit. 2, subtit. G, app. C (hereinafter TEX. CODE JUD. CONDUCT). Specifically, the Commission alleged in the Examiners' Pre-Trial Memorandum that Respondent had violated the following canons:

Canon 2A of the Texas Code of Judicial Conduct provides, in relevant part: "A judge shall comply with the law ..."

Canon 3B(1) of the Texas Code of Judicial Conduct provides, in relevant part: "A judge shall hear and decide matters assigned to the judge except those which disqualification is required or recusal is appropriate."

Canon 3B(2) of the Texas Code of Judicial Conduct provides, in relevant part: "A judge ...shall maintain professional competence in the [law]."

Canon 3B(4) of the Texas Code of Judicial Conduct provides, in relevant part: "A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in their official capacity, ..."

Also, the Commission cited the following additional constitutional provisions as "Applicable Law:"

U. S. Const. amend. V provides, in relevant part, "...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

U. S. Const. amend. VI provides, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

U. S. Const. amend. XIV, § 1 provides, in relevant part, "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In response to the new matters alleged in the Examiners' Pre-Trial Memorandum, Respondent filed objections, a motion to strike, and alternatively, a motion in limine. Respondent asserted that the new allegations constituted a surprise that prejudiced her "on the eve of trial." In support of her objections, Respondent cited Rule 63 of the Texas Rules of Civil Procedure. *See* TEX. R. CIV. P. 63 (requiring leave of court for filing an amended pleading within seven days of

trial). Respondent also asserted that the Commission’s new allegations were an attempt to amend the Charging Document without seeking leave of court.

Respondent orally presented her objections to the Review Tribunal at the outset of trial. The Commission responded to the objections by asserting that, because the proceeding before the Review Tribunal is a trial *de novo*, the Commission can “prove whatever other canons or sanctions we think are possible.” In that regard, an examiner for the Commission advised the Review Tribunal that in preparing for trial, the examiners determined that Respondent had violated other canons and that the Commission was entitled to expand the charges it was bringing against Respondent. The Review Tribunal took the matter of Respondent’s objections under advisement.<sup>4</sup> The Review Tribunal also granted Respondent’s request for a running objection to all matters that were not set out in the Charging Document.

The Commission also addressed the matter of the expanded charges in its post-trial briefing. With respect to Respondent’s reliance on Rule 63, the Commission asserted that Respondent was on notice that when she filed her appeal that “any and all Canons were before the court in a trial *de novo*.” The Commission further asserted that “[w]ith such quick deadlines governing a Special Court of Review, it is not practicable for the Examiners to follow [Rule 63].” Finally, the Commission cited the recent opinion of another special court of review to assert that the Review Tribunal may *sua sponte* determine that Respondent violated additional canons in addition to those charged by the Examiners.

#### *Analysis*

The rules of law, evidence, and civil procedure govern our review. *In re Sharp*, 480 S.W.3d 829, 833 (Tex. Spec. Ct. Rev. 2013). Subsection (d) of Texas Government Code Section 33.034 provides as follows:

Within 15 days after the appointment of the court of review, the commission shall file with the clerk a charging document that includes, as applicable, a copy of the censure or sanction issued and *any additional charges to be considered by the court of review*. The charging document is public on its filing with the clerk. On receipt of the filing of the charging document, the clerk shall send the charging document to the judge who is the subject of the document and to each justice on the court of review.

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<sup>4</sup>Respondent electronically filed her objections on the night before trial. Because of the nature of electronic filings and the process of distributing them, the Review Tribunal was not able to read the objections until the noon recess of trial when they were forwarded by the clerk’s office.

GOV'T § 33.034(d) (emphasis added). Thus, the applicable statute requires that any additional charges that the Commission seeks to present to the special court of review must be included in the Commission's charging document.<sup>5</sup> Here, because the Commission sought to bring additional charges against Respondent that were not included in its charging document, we sustain Respondent's objections to the additional charges. *See id.*

In sustaining Respondent's objections, we note that neither the statutes nor the applicable rules contain a provision for the Commission to amend its charging document in a special court of review proceeding. This omission is not an issue in this matter, however, because the Commission did not seek to amend its charging document to expand the charges against Respondent. Accordingly, we express no opinion as to whether a charging document may be amended and under what circumstances, if any, it may be amended.

In addition to the statutory requirement that any additional charges to be presented to the special court of review be included in the charging document, there are procedural due process concerns that are at stake in a proceeding before a special court of review. "Due process at a minimum requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Univ. of Tex. Med. Sch. at Hous. v. Than*, 901 S.W.2d 926, 930 (Tex. 1995) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)). The statutory requirement that additional charges are to be included in the charging document helps to achieve procedural due process. Further, "[i]t is well-established that '[t]he failure to give adequate notice violates the most rudimentary demands of due process of law.'" *Mosley v. Tex. Health & Human Servs. Comm'n*, 593 S.W.3d 250, 265 (Tex. 2019) (quoting *Mosser v. Plano Three Venture*, 893 S.W.2d 8, 12 (Tex. App.—Dallas 1994, no writ)). Here, the Commission's notice at the eleventh hour of the additional charges it sought to bring against Respondent was simply inadequate.

In addition to due process concerns, there are practical considerations to consider that weigh against the Commission's position. As noted by the Commission, a proceeding before a special court of review is on a very short time frame. *See* GOV'T §33.034(b)–(d), (h). Contrary to the Commission's position, the limited time to conduct a special court of review weighs against

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<sup>5</sup> Because the additional charges that the Commission sought to bring against Respondent were not included in the Charging Document, the Commission's contention that Respondent should not have been surprised by the additional charges is incorrect.

permitting additional charges to be added on the eve of trial because the compressed time for the proceeding reduces the time for the respondent to secure evidence to rebut additional charges. Further, the panel for the special court of review is selected from intermediate appellate court justices located throughout the state. In this instance, the panel members are from Dallas, Houston, and Eastland. The Respondent and the witnesses in the proceeding are from Bexar County. The trial was conducted in Austin in the chambers of the Texas Supreme Court on the last day for it to be held. Simply put, the Special Court of Review did not have the flexibility to grant a continuance in this matter as would be possible with a typical trial setting or to permit the parties to have additional time for the trial.

Finally, the Commission's reliance on the fact that a special court of review conducts a trial de novo is misplaced. Section 33.034(e)(2) provides that 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. *Id.* at 33.034(e)(2). As per Rule 506.3 of the Texas Rules of Civil Procedure, "[a] trial de novo [from justice court] 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. However, Rule 506.3 does not address amended pleadings in the trial de novo. Case law addresses the ability of parties to amend their pleadings in an appeal from justice court to county clerk. "The general rule is that parties on appeal from the justice court may amend their pleadings in the county court, if the amended pleadings do not set up a new cause of action." *Humble Oil & Refin. Co. v. Sw. Bell Tel. Co.*, 2 S.W.2d 488, 489 (Tex. App.—Waco 1927, no writ); see 6 TEX. JUR. 3d *Appellate Review* § 828 ("A cause of action cannot be amended in county court to embrace a different cause from that sued on before the justice court.") (citing *Humble Oil*). The Commission's attempt to bring additional charges against Respondent is the functional equivalent of bringing a new cause of action.

Accordingly, we sustain Respondent's objections to the additional charges that the Commission sought to bring against her. The Commission is restricted to the sole charge alleged in the Charging Document.

#### *Decision on the Merits*

We note at the outset that 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 Slaughter*, 480 S.W.3d 842, 845 (Tex. Spec. Ct. Rev. 2015) (per curiam) (quoting *In re Lowery*, 999 S.W.2d 639, 648 (Tex. Rev. Trib. 1998,

pet. denied)). Similarly, the primary task of a special court of review is not to punish judges but rather it is to provide guidance to judges and to protect the public. *In re Davis*, 82 S.W.3d 140, 150 (Tex. Spec. Ct. Rev. 2002).

### *Factual Background*

Respondent was elected in 2018 as the judge of the County Court at Law No. 2 of Bexar County. She served in that capacity from January 2019 until her term expired at the end of 2022. The Commission directed a great deal of the evidence offered at trial to the additional charges that it attempted to assert against Respondent. However, as discussed above, the Commission is restricted to the sole charge alleged in the Charging Document. Accordingly, we restrict our discussion of the evidence to that which is relevant to the sole charge alleged in the Charging Document.

The Honorable John A. Longoria is the former judge of the County Court at Law No. 5 of Bexar County. Judge Longoria was also the local administrative judge of the Bexar County Courts at Law at the time that Respondent served as a judge. *See* GOV'T § 74.0911 (West 2023). He filed a complaint with the Commission that led to Respondent's Public Reprimand on a ground set out in the Charging Document—that Respondent did not timely execute the business of her court. As set out below, Judge Longoria issued a letter and two memorandums concerning Respondent's performance of her judicial duties. These letters form the crux of the Commission's decision to issue the Public Reprimand.

### *Letter of August 25, 2020*

Judge Longoria originally wrote to the Commission in October 2020. In his letter to the Commission, Judge Longoria enclosed a letter that he wrote to Respondent dated August 25, 2020. In his August 25, 2020 letter, Judge Longoria informed Respondent that, in March and April 2020, he had received multiple complaints from the Bexar County Community Supervision Department to the effect that Respondent was failing or refusing to review and rule on motions to revoke probation or to consider reports of probation violations. He advised her that he had ruled on over ninety of Respondent's cases in an effort to assist her. Judge Longoria noted that Respondent's delay in ruling resulted in probationers violating probation and the probationers "getting away with it" because their probation terminated before Respondent acted.

Judge Longoria further advised Respondent in his August 25, 2020 letter that he had been made aware of more allegations (since March and April 2020) that she was not performing her

duties, particularly with probation violators. He informed Respondent that she had approximately 1,138 “unscheduled” cases that were “in limbo.” Judge Longoria finished his letter with a request for Respondent to respond to him in writing. He advised that he would forward a copy of the August 25, 2020 letter to the Commission if he did not receive a timely response.

The Commission called Judge Longoria as a witness at trial. With respect to the complaints about Respondent that he addressed in his August 25, 2020 letter, Judge Longoria testified that attorneys complained about having to be physically present in Respondent’s court for hours, about her demeanor towards attorneys and their clients, and that her court sessions would last until late in the evening. Judge Longoria also received complaints that Respondent was conducting “compliance hearings” without a motion being filed and without attorneys present. Judge Longoria explained that the compliance hearings were hearings that Respondent conducted with probationers with no pending motion to revoke probation or notice of violation. With respect to complaints from the probation department, Judge Longoria testified that he was advised that Respondent waited “weeks and months” to rule on pending motions concerning probation, including motions to release probationers from probation and to remove probationers from GPS monitoring.

Judge Longoria also testified about complaints he received from the Bexar County Clerk’s office in the time frame of February 2020. In this regard, the county clerk’s office assigned clerks to work in the chambers of the Bexar County Courts at Law. Judge Longoria testified that he received complaints that Respondent was mistreating the deputy clerks assigned to her court. Judge Longoria testified that the complaints were serious enough that it led to a confrontation between Respondent and the Bexar County Clerk. As a result, the county clerk pulled her deputy clerks from working in Respondent’s chambers as well as the clerk’s files. Judge Longoria testified that he got involved in the dispute between Respondent and the county clerk by calling a meeting between the two officials. He testified that the problems between Respondent and the county clerk’s office were resolved after the meeting.

With respect to the over ninety cases from Respondent’s docket that Judge Longoria referenced in the August 25, 2020 letter, he testified that he ruled on them because he thought it was reasonable to do so. On cross-examination, Judge Longoria acknowledged that he ruled on the ninety cases during March and April 2020 and that the court shutdown as a result of the Covid-19 pandemic that began in Texas in mid-March 2020. Judge Longoria’s cross-examination also



revealed that Respondent was on vacation when he signed the orders in the ninety cases from her court.

Judge Longoria also explained that his reference to “unscheduled” cases was to cases that were undocketed and not scheduled for any type of initial setting. He also noted that he did not believe that Respondent made any changes after his August 25, 2020 letter and that she did not respond to him in writing as he requested her to do.

*Memo of February 10, 2021*

Judge Longoria later sent a memo to Respondent dated February 10, 2021. This memo addressed concerns that he had about the manner in which she was conducting “compliance hearings” as well as his concerns about her lack of attention to probation matters. Judge Longoria expressed that he was concerned that no records of the compliance hearings were being kept, no defense counsel was present during the hearings, hearings often went past 5:00 p.m., which required overtime compensation to be paid to county employees, and no signed orders were entered after the compliance hearings. Judge Longoria concluded the February 10, 2021 memo with the comment that it was his duty to notify Respondent of these concerns and to request that she correct them immediately.

With respect to the February 10, 2021 memo, Judge Longoria testified that he continued to receive similar complaints concerning Respondent. He did not recall Respondent coming to discuss the matter with him or whether she made any changes to address the concerns he raised in the February 10, 2021 memo.

*Memo of June 9, 2022*

On June 9, 2022, Judge Longoria sent a memo to all Bexar County Court at Law Judges. He began the memo with the following statement:

Judges--There have been several concerns raised regarding the manner in which Judge Grace Uzomba is handling her criminal court docket, including the serious and egregious lack of attention to pretrial violation reports, probation matters, family violence cases, and other misdemeanor cases, including over 1700 cases without current settings.

He stated in the memo that he was ordering that the 177 pending family law cases and 1,656 cases without initial settings in Respondent’s court be redistributed to the other County Courts at Law, and that Respondent’s court would be taken off the arraignment rotation for the criminal courts. Judge Longoria testified that he took the action of removing her cases because Respondent “was

violating her duties [and] was not doing her job.” He also explained that the arraignment rotation is the manner in which a Bexar County court at law judge gets new cases. When asked on cross-examination why he took the cases from Respondent’s docket, Judge Longoria testified as follows:

The fact that I had previously noted to her that she had 1138 cases unscheduled, no scheduled, out in limbo. And I even used the word “limbo.” Then two years later, we would regularly get reports, which is normal for the courts, of how many cases we have backlogged and how many cases we have on schedule. Instead of improving the 1138, it had gone to 1776 or whatever. And to me, that was just the straw in the camel’s back.

Judge Longoria also noted that at some point he had 1,500 unscheduled cases on his docket. However, he did not transfer cases from his docket to other courts. Instead, he instructed his staff to get them scheduled promptly.

With respect to Respondent’s compliance hearings for probationers, Judge Longoria testified that while they may have been innovative, he felt they were inappropriate because they diverted her attention from other matters. When asked if Respondent violated any of the canons, he testified that “the canons require her to timely and efficiently handle her docket. When you have 1700 cases in arrears, that are not scheduled, not just backlogged but not scheduled, I have to disagree with that description.” Judge Longoria also testified that Respondent had a lot of turnover with her court coordinators.

In addition to Judge Longoria, the Commission also called other witnesses. Jarvis Anderson is the adult probation chief of the Bexar County Supervision and Corrections Department. He testified that his office assigns court liaison officers to each of the Bexar County Courts at Law, and that four or five of these officers had requested transfers out of Respondent’s court. Anderson testified that Respondent deviated from what other courts did because she held compliance hearings for probationers that were compliant with the terms and conditions of probation. Respondent’s compliance hearings required more work for this office. Anderson testified that a probationer that is doing well does not need to come back to court for a compliance hearing.

Additionally, Anderson visited with Respondent about the strain on his department from a budget standpoint if she held court past 5:00 p.m. His office also created a special report for Respondent’s court to help her track the compliance of probationers. Anderson also noted that a delay in signing orders releasing a probationer with an interlock device on his or her vehicle would

result in the probationer having to pay additional fees for the device. On cross-examination, Anderson noted that he was advised on a single occasion about Respondent holding court past 5:00 p.m. He also testified that he had no testimony that Respondent did anything wrong.

Oscar Alonzo is roving court coordinator for Bexar County Court Administration that fills in to work when the regular court coordinator for a court is out. He was assigned to Respondent's court for six to seven weeks straight in March and April 2022, which he described to be a longer assignment than he typically works in a court. He testified that Respondent restricted him in what he typically does when he is assigned to a court. He opined that "there was a lot of time wasted in the actual court" with respect to Respondent. Alonzo also testified that Respondent did not sign motions and other paperwork in a timely manner and that she allowed a lot of files to accumulate in her office awaiting action. When asked on cross-examination if he believed that Respondent intentionally tried to disobey the rules for the conduct of judges, Alonzo replied: "I guess not."

Irene Blanco is a deputy county clerk that was assigned to Respondent's court for six to eight months in 2019 and 2020. Blanco testified that she was not able to perform her job because Respondent did not complete paperwork on time. She also testified that the number of files in Respondent's chambers increased over time.

Veronica Velez is a court reporter that worked for Respondent from March 2022 until June 2022. Velez testified that days dragged working for Respondent and that she did not feel like they got much done. She testified that Respondent's guilty pleas averaged forty-five minutes each as compared to her current judge whose pleas last on average five minutes. Velez also testified that Respondent conducted compliance hearings on a daily basis, and they were a priority for Respondent. Velez testified that as a matter of routine, she made a record of the compliance hearings that Respondent conducted. Velez opined that Respondent did not handle matters in her court in a timely manner and that she did not perform her duties properly.

The Commission also called Respondent as an adverse witness. Respondent acknowledged receiving three written communications from Judge Longoria. She does not believe that she responded in writing to Judge Longoria's letter of August 25, 2020, but she believes that she responded in writing to his memo of February 10, 2021. Respondent testified that during her four-year term, she had four court reporters, four court coordinators, and four or five court liaison officers from the probation office. Respondent attributed her backlog of cases to the high turnover

of her staff, but she did not feel she was responsible for the turnover.<sup>6</sup> She also denied being behind on signing orders in her court.

When questioned by her attorney, Respondent testified that she felt she was being punished by the Commission, and that she did not believe that the Commission had thoroughly reviewed the allegations against her. Respondent denied that she willfully engaged in improper conduct and stated that she did not intentionally violate the canons. Respondent testified that courtroom procedures changed after the onset of the pandemic and that the adjustments were difficult. She also testified that she did not have a court coordinator for a four-month period.

Testimony that Respondent provided to the Commission was also offered into evidence. She attributed her backlog on “an extended absence of key support personnel,” and that she “had to extend [sic] a significant amount of time reviewing paperwork submitted” by staff from the Bexar County Probation Department because she repeatedly found significant mistakes in those documents. Respondent stated that once she was made aware of the overtime issue, she did everything in her power to make sure compliance hearings ended by 5:00 p.m. She also testified to the Commission that she had a record made of all compliance hearings.

Respondent also presented the testimony of Patricia Garcia, a retired Bexar County court coordinator. Garcia testified that a court coordinator is integral to the day-to-day operations of a county court at law, and that the court coordinator is the person that keeps the caseload flowing to keep the number of unscheduled cases down. Garcia also testified that Respondent’s compliance hearings were innovative, but that they took up too much time and that people thought they were unnecessary.

### *Analysis*

The Commission has the burden to prove the charges against Respondent by a preponderance of the evidence. GOV’T § 33.034(f); *In re Slaughter*, 480 S.W.3d at 845. We first address the third factual ground alleged by the Commission against Respondent in its Charging Document—that she failed to make recordings of compliance hearings. The preponderance of the evidence offered at trial does not support this allegation. Both Respondent and Velez, her former court reporter, testified that Respondent made a record of the compliance hearings.

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<sup>6</sup>The additional factual charge that the Commission sought to bring against Respondent (that she failed to maintain a professional work environment in her court) focused on placing the blame on Respondent for the high turnover in her chambers.

The other two factual grounds alleged by the Commission in the Charging Document in its sole charge were that Respondent failed to: “timely execute the business of the court regarding community supervision compliance hearings,” and that she failed to “tend to court records she alone must review and sign in order for the judicial record to be properly kept.” These grounds are essentially a general allegation that Respondent did not timely execute the business of her court.

There are two canons that concern a judge’s timely performance of his or her duties. Canon 3(B)(9) provides that “[a] judge *should* dispose of all judicial matters promptly, efficiently and fairly.” TEX. CODE JUD. CONDUCT Canon 3(B)(9) (emphasis added). Canon 3(C)(1) provides that “[a] judge *should* diligently and promptly discharge the judge’s administrative responsibilities.” *Id.* Canon 3(C)(1) (emphasis added). Importantly, those canons use the term “should” rather than “shall.” Canon 8(B)(2) provides as follows: “‘Should’ or ‘should not’ relates to aspirational goals and as a statement of what is or is not appropriate conduct *but not as a binding rule under which a judge may be disciplined.*” *Id.* Canon 8(B)(2) (emphasis added). Thus, by their express terms, the Canons do not permit the Commission to charge Respondent with violating these two “timeliness” rules of the Canons as a basis for discipline.

Perhaps because of the aspirational nature of Canons 3(B)(9) and 3(C)(1), they have not been addressed by other special courts of review to any great extent. *See* Robert P. Schuwerk, Lillian B. Hardwick, & M. Lewis Kinard, 48B *Texas Practice Series: Handbook of Texas Lawyer and Judicial Ethics* § 27:30 (Paragraph B: Adjudicative responsibilities—(9) disposing of judicial matters promptly, efficiently, and fairly) (2023), § 27:38 (Paragraph C: Administrative responsibilities—(1) disposing of administrative matters diligently, promptly, and fairly) (2023). However, at least one commentary has suggested that “a judge may warrant a sanction by administrative failure by virtue of the constitutional provision in art. V, § 1–a(6): ‘willful or persistent conduct that is clearly inconsistent with the proper performance of [judicial] duties.’” Schuwerk, Hardwick, & Kinard 48B *Texas Practice Series: Handbook of Texas Lawyer and Judicial Ethics* § 27:38 Paragraph C. note 2. This standard comports with the sole charge before this tribunal. Thus, the critical inquiry in this proceeding is whether Respondent engaged in willful and persistent failures to timely execute the business of the court that were clearly inconsistent with the proper performance of her duties as a judge. Specifically, we must determine if

Respondent's actions crossed the threshold of willful or persistent conduct such that they exceeded the aspirational goal of promptly handling the business of her court.

With respect to "willful" conduct, another special court of review recently noted as follows:

Willful conduct, for purposes of [Article V, Section 1-a(6)(A) of the Texas Constitution] involves the improper or wrongful use of the power of office by a judge acting intentionally, or with gross indifference. This contemplates more than an error in judgment or lack of diligence. Rather, it must evince moral turpitude, dishonesty, corruption, misuse of office, bad faith or the like. And, the Commission must prove the jurist had either: 1) the conscious objective of causing the result or of acting in the manner defined in the pertinent rule of conduct or 2) exercised indifference that is flagrant, shameful and beyond all measure and allowance when performing the act.

*In re Rangel*, 677 S.W.3d 918, 920 (Tex. Spec. Ct. Rev. 2023) (internal citations omitted). "Persistent" means "continuing firmly or obstinately in a course of action in spite of difficulty or opposition" or "continuing to exist or endure over a prolonged period." *In re Ginsberg*, 630 S.W.3d 1, 7 (Tex. Spec. Ct. Rev. 2018) (quoting NEW OXFORD AMERICAN DICTIONARY 1307 (Angus Stevenson & Christine Lindberg eds., 3d ed. 2010)). "Persistent" conduct also has been defined as conduct that "demonstrates a series of associated efforts and determination which is insistently repetitive or continuous." *Id.* (quoting *In re Barr*, 13 S.W.3d 525, 558–59 (Tex. Spec. Ct. Rev. 1998)).

In its post-trial briefing, the Commission alleges that Respondent "mismanaged" her court by failing to hear and decide matters in a timely manner, and that it was a consistent problem throughout her tenure. However, the Commission has not pointed to any objective time standards that Respondent violated. In this regard, the Texas Rules of Judicial Administration do not contain any provisions for the timely disposition of criminal cases. TEX. R. JUD. ADMIN. 6.1. The Local Rules of the Statutory County Courts at Law of Bexar County also do not have specific time requirements for criminal cases. BEXAR (TEX.) CNTY. CT. LOC. R. A.(II)(C) (Time Standards for Disposition of Cases). Instead, the local rules simply provide that "the trial of a criminal action shall be given preference over trials of civil cases." *Id.* Additionally, the local rules are silent on any time requirements for the scheduling of the initial setting of criminal cases filed in Bexar County. *Id.*

The Commission also contends that Respondent conducted compliance hearings in an "unusual way." The crux of the Commission's contention in this regard is that Respondent

conducted compliance hearings when they were unnecessary, and that by doing so, Respondent spent time on a needless activity that diverted her attention away from her other responsibilities.

Respondent takes the position that her compliance hearings were “unique” and “innovative.” She also asserts that her actions “at best were no more than mere lapses in judgment and a lack of diligence” that did not rise to the level of a willful or persistent conduct as required by Article V, Section 1-a(6)(A) of the Texas Constitution.

The evidence shows that Respondent spent a great deal of time on probation compliance hearings and conducted them at times when her peers did not do so. A trial judge has the inherent power to control the manner of the disposition of cases on his or her docket. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 240 (Tex. 2001) (per curiam). Further, the Bexar County Local Rules provide that “Court shall be held at such times as may be determined by the judge of each court.” BEXAR (TEX.) CNTY. CT. LOC. R. at A.(II)(B). Thus, the local rules also vested Respondent with discretion in how she could elect to conduct proceedings in her court. The preponderance of the evidence does not establish that Respondent’s manner of conducting probation compliance hearings, in and of itself, constituted a willful or persistent failure to do her duties.

The more troubling aspect of the Commission’s allegations against Respondent is the contention that she did not sign orders in a timely manner and that her unscheduled cases grew to a level that drew the notice, and eventual intercession, of the local administrative judge.

With respect to the approximately ninety cases in which Judge Longoria ruled upon from Respondent’s docket in March and April 2020, the evidence indicated that Respondent was on vacation at the time. There was no evidence that Respondent’s vacation was excessive when compared to her peers, or that Respondent failed to make adequate arrangements for matters on her docket during her absence.<sup>7</sup> Additionally, this period coincided with the onset of the pandemic. The preponderance of the evidence does not support a finding that Respondent willfully or persistently failed to perform her duties with respect to these ninety cases.

With respect to the unsigned orders in probation matters, the evidence concerned general allegations that probationers were required to pay for additional months for interlock devices on their vehicles. These accusations, if true, are very troubling. However, there was no evidence that

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<sup>7</sup>We note that the Bexar County Local Rules for Statutory County Courts at Law provide that vacations for judges “[n]ormally . . . will be limited to a calendar month or 21 working days per annum.” BEXAR (TEX.) CNTY. CT. LOC. R. D(II)(2.2).

quantified how much extra money that probationers were required to pay, or how many probationers had to pay such additional money. There was also no evidence that quantified how many probationers had their probation periods expire even though they had committed probation violations. In the absence of this evidence, is difficult for the Review Tribunal to determine if Respondent's acts and omissions had any tangible consequences to probationers or the public.

Respondent attributed the high number of unscheduled cases on her docket to the high turnover in her chambers. From our collective experience, the members of this Review Tribunal acknowledge a judge's dependence on his or her clerical staff to schedule and process cases. Further, the evidence indicated that at some point Judge Longoria had a similar number of unscheduled cases. While it is possible for a judge to cause high turnover and contribute to his or her own untimeliness, what matters here is proof of willful or persistent untimeliness on the part of Respondent. Here, the evidence is devoid of sufficient data for comparison purposes for the Review Tribunal to determine that Respondent engaged in willful or persistent untimeliness.

In conclusion, the preponderance of the evidence does not establish a willful or persistent failure of Respondent to properly perform her judicial duties. Ultimately, we agree with Respondent—her acts and omissions do not rise to the level of sanctionable conduct because the evidence shows that her deficiencies in executing the business of her court were no more than mere lapses in judgment or a lack of diligence. As held in *In re Rangel* and the cases that it cites, willful conduct is more than a mere error in judgment or a lack of diligence. 677 S.W.3d at 920. We conclude that in order for a judge to be sanctioned for failing to timely execute the business of his or her court, the preponderance of the evidence must establish that the judge either had the conscious objective of not timely executing the business of the court or exercised flagrant indifference toward the timely performance of his or her duties. *See id.* The evidence in this case does meet this standard with respect to the manner in which Respondent executed the business of her court.

#### *Conclusion*

The sole charge properly before this Review Tribunal (as alleged in the Charging Document) is dismissed. Having found that Respondent did not violate the Texas Constitution as alleged, we vacate the Commission's Public Reprimand and dismiss the charge against Respondent without sanctions.

PER CURIAM