Order Issued January 30, 2023

DOCKET NO. SCR 20-0002

SPECIAL COURT OF REVIEW

IN RE INQUIRY CONCERNING ROSIE SPEEDLIN-GONZÁLEZ
CJC Nos. 19-1038, 19-1736, 20-0121, AND 20-0267

OPINION

This Special Court of Review[1] is assigned to conduct a trial de novo of two disciplinary sanctions issued by the State Commission on Judicial Conduct (hereafter, "the Commission")—one private and one public—against Respondent, the Honorable Rosie Speedlin-González, Judge of the County Court at Law No. 13 in San Antonio, Bexar County, Texas (hereafter "Respondent"). *See* TEX. GOV'T CODE ANN. § 33.034 (providing the procedure for appealing the Commission's sanctions). 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 Lowery*, 999 S.W.2d 639, 648 (Tex. Rev. Trib. 1998, pet. denied).

[1]The Special Court of Review consists of The Honorable Bill Pedersen, III, Justice of the Fifth Court of Appeals, presiding by appointment; The Honorable Bonnie Lee Goldstein of the Fifth Court of Appeals, participating by appointment; and The Honorable J. Wade Birdwell, Justice of the Second Court of Appeals, participating by appointment.

Article V of the Texas constitution states that any judge may be disciplined for willful or persistent violation of rules promulgated by the Supreme Court of Texas, 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 her duties or casts public discredit upon the judiciary or administration of justice. *See* 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 sanction in the form of a private or public admonition, warning, reprimand, or requirement that the judge obtain additional training or education. *See* Tex. Const. art. V, § 1-a(6)(A), (8). Upon receipt of notification of any type of sanction, the judge may request a special court of review be appointed by the chief justice of the supreme court to review the action of the Commission. *See* TEX. GOV'T CODE ANN. § 33.034(b); Tex. Rules Rem'l/Ret. Judg. R. 9(a). The Commission then files a charging document with the allegations of judicial misconduct against the judge. *See* TEX. GOV'T CODE ANN. § 33.034(d). The special court of review holds a trial de novo and renders its decision by written opinion. *See id.* § 33.034(e), (h). As this review is governed to the extent practicable by the rules of law, evidence, and procedure that apply to the trial of a civil action, the Commission has the burden to prove the charges against a respondent by a preponderance of the evidence. *See id.* § 33.034(f); *In re Hecht*, 213 S.W.3d 547, 560 (Tex. Spec. Ct. Rev. 2006); *In re Canales*, 113 S.W.3d 56, 66 (Tex. Rev. Trib. 2003, pet. denied); *In re Davis*, 82 S.W.3d 140, 142 (Tex. Spec. Ct. Rev. 2002).

Based upon its charging document, the Commission alleges two acts by Respondent which it contends violate one or more of Canons 2B, 3B(2), 3B(6), and 4A(1) of the Code of Judicial Conduct[2] and article V, § 1-a(6)(A) of the Texas constitution. Specifically, the Commission alleges

---

[2]Canon 2B provides in pertinent part: "A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others;

Respondent (1) posted to her Judicial Facebook Page—contemporaneously with the conclusion of a matter tried before her—photographs of, biographical information about, and her personal congratulations to the attorneys representing the successful party, thereby lending the prestige of her office to said attorneys and conveying to the public the impression that they were in a special position to influence her decisions and (2) posted a rainbow or "pride" flag ("pride flag") alongside the flags of the United States and of the State of Texas at the bench for formal proceedings in her courtroom, and thereby conveyed to the public a perceived partiality on behalf of the partisan interests of the LGBTQ community.[3]

Based upon its original finding of the first alleged violation, the Commission issued a Public Warning and Order of Additional Education requiring Respondent to obtain four hours of such instruction "in the area of avoiding actions which would lend the prestige of her judicial office to advance the private interests of the judge or others." Based upon its original finding of the second alleged violation, the Commission issued a Private Warning and Order of Additional Education requiring Respondent to obtain one hour of instruction with a mentor, in addition to her required annual judicial education for Fiscal Year 2020, "in the area of avoiding actions that convey or permit others to convey the impression that they are in a special position to influence the judge." Significantly, neither disciplinary sanction found a "willful or persistent" violation of

---

nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge." Tex. Code Jud. Conduct, Canon 2A. Canon 3B(2) provides: "A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism." *Id.* at Canon 3B(2). Canon 3B(6) provides: "A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so." *Id.* at Canon 3B(6). Finally, Canon 4A(1) provides: "A judge shall conduct all of the judge's extra-judicial activities so that they do not … cast reasonable doubt on the judge's capacity to act impartially as a judge[.]" *Id.* at Canon 4A(1).

[3]The Commission initiated its underlying investigation based upon formal complaints from a practicing attorney and two citizens of Bexar County—one of which was anonymous—and a failure of Respondent to respond to the concerns of the local administrative judge.

the Code; and, although in this appeal de novo the Commission seeks a public warning and the same educational requirements for both alleged violations, it does not expressly allege a willful or persistent violation. Because we find that the Commission failed to plead and prove that Respondent's actions constituted willful or persistent violations of the Constitution or the Code, we dismiss the Commission's private and public disciplinary sanctions, and find Respondent not guilty of all charges.

Previous Special Courts of Review and Review Tribunals have held that the term "willful" involves intentional or grossly indifferent misuse of judicial office and involves more than an error of judgment or lack of diligence. *In re Slaughter*, 480 S.W.3d 842, 848 (Tex. Spec. Ct. Rev. 2015); *In re Sharp*, 480 S.W.3d 829, 833 (Tex. Spec. Ct. Rev. 2013). However, a judge need not have specifically intended to violate the Code of Judicial Conduct in order to be subject to discipline; when a judge intends to engage in the conduct for which he or she is disciplined, a willful violation occurs. *Id.* (citing *In re Davis*, 82 S.W.3d at 148; *In re Barr*, 13 S.W.3d 525, 539 (Tex. Rev. Trib. 1998)).

Canon 8A of the Code of Judicial Conduct provides that not "every transgression will result in disciplinary action" and whether disciplinary action is appropriate, and the degree of discipline to be imposed, "should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system." Moreover, the purpose of sanctions in cases of judicial discipline is to preserve the integrity and independence of the judiciary and to restore and reaffirm public confidence in the administration of justice. The discipline we impose must be designed to announce publicly our recognition that there has been misconduct; it must be sufficient to deter respondent from again engaging in such

conduct; and it must discourage others from engaging in similar conduct in the future. *In re Barr*, 13 S.W.3d at 560 (quoting *In re Kneifl*, 351 N.W.2d 693, 700 (Neb. 1984)).

Texas courts also consider and apply the "*Deming* Factors" in determining the appropriate sanction for a judge's conduct that has been found violative of the Code of Judicial Conduct and/or constitutional standards. Those factors, which are non-exclusive, are:

(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 her 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 her 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 her position to satisfy his personal desires.[4]

The Commission and Respondent filed "Stipulations of the Parties," which included certain facts and evidence. Those stipulations and the Commission's exhibits designated in the stipulation were admitted by the Court at trial. Respondent was the only witness. The facts are largely undisputed.

[4] *In re Sharp*, 480 S.W.3d at 839 (citing *Matter of Deming*, 108 Wash. 2d 82, 736 P.2d 639, 659 (1987) (en banc)).

Judicial Facebook Page (20-0267)

Stipulation No. 8 states that Respondent created a Facebook page for her personal judicial use when she first took the bench; it is not operated, moderated, or monitored by Bexar County. Respondent testified that she created this Judicial Facebook Page to keep the public informed of proceedings in her court, and in doing so sometimes posted photographs of, professional information about, and her personal congratulations to the attorneys representing the successful party for their presentations upon the conclusion of some jury trials. Respondent further testified that she did so as a means of publicly encouraging counsel for their accomplishment, as she herself had been encouraged, without any intent to suggest that, by virtue of their victory, they enjoyed a greater degree of influence in her court.

The Commission argues that Respondent effectively used her Judicial Facebook Page to show favor for the "winning lawyers" by ignoring the "losing lawyers." Yet, Stipulation No. 9 states that after receiving a written inquiry from the Commission regarding the Facebook posts, Respondent stopped making additional posts to her Judicial Facebook Page, and later removed those posts from her page. The only evidence presented, by stipulation or testimony, was that exactly twelve posts congratulated the prosecution team, and exactly twelve congratulated the defense team. The Commission has not alleged that the posts are factually inaccurate, nor that Respondent willfully or persistently maintained them.

A straightforward application of the *Deming* factors, as fully set forth above, reveals no willful or persistent violations of the Code. Even assuming, without so finding, that the Facebook posts constitute some "pattern" of "misconduct," Respondent immediately ceased upon receipt of the Commission's written inquiry. And although the posts' pictures occurred in the courtroom and related past events that occurred in the courtroom, in Respondent's official capacity, Respondent

has acknowledged that these acts occurred, and has clearly and credibly evidenced her desire to conduct herself within the Code of Judicial Conduct, while disputing that her conduct violates that Code. Respondent's Facebook posts all occurred within her first year of judicial service, and the Commission introduced no evidence of any prior complaints against her. The Commission has produced no, or legally insufficient evidence, that the Facebook posts have had any effect on the integrity and respect for the Texas judiciary generally, or that Respondent has exploited, or allowed others to exploit, her position in this manner to the detriment of the judiciary.

It is noteworthy that this alleged misconduct occurred prior to the global pandemic which drove much of the Texas bench and bar onto the internet in unprecedented ways. Hearings, bench trials, even jury trials, have been conducted via Zoom, and simultaneously broadcast on YouTube. Many Texas judges have broadcast official proceedings on Facebook as they occurred. While not an example available to the Commission at the time of the initiation of these proceedings, the past three years have perhaps demonstrated that the Commission takes an antiquated view of online publicity of official judicial proceedings.

A prior Special Court of Review has relatively recently considered a comparable case, *In re Slaughter*, 480 S.W.3d 842 (Tex. Spec. Ct. Rev. 2015) (per curiam). That case involved allegations of a willful violation of Canons 1a-6(A), 3(B)(10), & 4(A) of the Texas Code of Judicial Conduct, and willful or persistent conduct that was clearly inconsistent with the proper performance of the judge's duties in violation of the standards set forth in Article V, Section 1–a(6)(A) of the Texas constitution. The Commission charged Judge Slaughter with misconduct for posting certain comments on her Facebook page about an ongoing trial in her court, as well as other matters unrelated to the trial that had occurred in her courtroom. *Id*. at 845-46. After her election to the bench, Judge Slaughter was very active in posting comments about matters that

were occurring in her court and in utilizing her Facebook page as a means to educate the public about her court. *Id*. at 846. Unlike here, Judge Slaughter's Facebook posts before and during a trial resulted in her recusal from a pending criminal case. *Id*. The Commission offered no evidence of any relevant consequences of the Facebook posts by the Respondent on any official proceeding to this Special Court of Review.

As in this case, Judge Slaughter, in both her written responses to the Commission's allegations and her testimony at trial, asserted that her social media postings did not violate the Texas Code of Judicial Conduct or the Texas constitution. *Id*. In the alternative, she asserted that if her conduct was found to be in violation of the Texas Code of Judicial Conduct, then the Code abridged her freedom of speech guaranteed by the First Amendment to the United States Constitution. *Id*. Judge Slaughter testified that she made a campaign promise to be transparent and to keep the public informed of the cases being tried in her court. *Id.* at 846, 851. Judge Slaughter testified that she made the Facebook comments in order to keep that promise to her constituents. *Id*. at 846, 851. While that Special Court of Review found it:

> …troublesome that these comments go beyond mere factual statements of events occurring in the courtroom and add the judge's subjective interpretation of these events at or near the time of their occurrence. Regardless, we find such comments, at most, showed what amounted to an error in judgment by posting facts from a pending case in her court.

Id. at 851.

In this case, the Facebook posts at issue do not "go beyond mere factual statements of events occurring in the courtroom." They also are not contemporaneous to an ongoing official proceeding, such that they could improperly influence any such official proceeding. They merely

accurately relate past, completed events. While the Canons at issue may not match exactly, this precedential examination is persuasive.[5]

As in Judge Slaughter's case, the Commission did not present any evidence that Respondent's extrajudicial statements would suggest to a reasonable person her probable decision on any particular case or would cast reasonable doubt on her capacity to act impartially as a judge.[6] Further, there was no pleading, no evidence, or legally insufficient evidence, that the Respondent's Facebook comments rose to the level of willful or persistent conduct clearly inconsistent with the proper performance of Respondent's duties as a judge. The Commission presented no evidence that the Respondent's actions amounted to an intentional or grossly indifferent misuse of her office.

After considering all of the evidence presented in the trial de novo with regard to CJC 20-0267, and after finding Respondent's testimony credible concerning her intent in so posting on her Judicial Facebook Page, this Special Court of Review finds that the credible evidence preponderates in favor of a finding that Respondent did not willfully violate Canons 2(B) or 4(A)(1) of the Code of Judicial Conduct or Article V, Section 1–a(6)(A) of the Texas constitution in 20-0267.[7]

---

[5]It is unclear to the panel what *stare decisis* consequence previous Special Courts of Review opinions provide, as they are unreviewable, and neither party has argued they constitute mandatory authority.

[6]Nevertheless, we would caution Respondent and other judges so inclined to recall that post-verdict judicial commentary may prompt and otherwise inform post-trial and post-judgment motions or warrant similar disciplinary proceedings.

[7]Respondent also challenges the constitutionality of Canon 2(B), but we need not decide this question and offer no opinion thereupon. *See In re Slaughter*, 480 S.W.3d at 855 n.2 ("Because we conclude the Respondent did not violate the Canons of Judicial Conduct or the Texas Constitution, we do not address the constitutional question" [of whether the Texas Code of Judicial Conduct abridged Respondent's freedom of speech guaranteed by the First Amendment to the United States Constitution].) (citing *In re Hecht*, 213 S.W.3d at 551-52).

The "Pride" Flag (19-1038, 19-1736, 20-0121)

Private or Government Speech?

The record unequivocally demonstrates that Respondent posted a rainbow or pride flag—beneath the Seal of Bexar County, Texas, behind her bench and alongside the flags of the United States and of the State of Texas—during formal proceedings in her courtroom. The Commission alleges that such a display unambiguously conveyed to the public a perceived partiality on behalf of the partisan interests of the LGBTQ community. Respondent both rejects the Commission's characterization of her display of a pride flag given to her by a local LGBTQ organization to commemorate her investiture as its first openly gay member to take the bench and argues forcefully that her display of the flag is a form of welcoming communication protected by the First Amendment. While we find her explanation for the display credible, Respondent misapprehends the nature of the forum from which she speaks and therefore why her communication remains subject to governmental regulation.

Speech by citizens on matters of public concern lies at the heart of the First Amendment, so the first issue here is whether Respondent's display of the pride flag was the "private speech" of citizen Rosie Speedlin-González or the "government speech" of the Judge of the Bexar County Court at Law No. 13. If we determine the judge's acts were "government speech," then First Amendment rights do not come into play. *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 207 (2015) ("When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says.").

In answering these questions, we conduct a holistic inquiry designed to determine whether the government intends to speak for itself or to regulate private expression. *Shurtleff v. City of Boston*, 142 S. Ct. 1583, 1589 (2022). Our review is not mechanical; it is driven by a case's context

rather than the rote application of rigid factors. *Id*. Past cases have looked to several types of evidence to guide the analysis, including: the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression. *See Walker*, 576 U.S. at 209-14.

The government does not have the right to freely regulate all private speech on government property. *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009). Members of the public retain their free speech views when in public places which have been historically used for "purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Id.* at 469. Government employees do not "shed constitutional protection when they enter the workplace." *Scott v. Flowers*, 910 F.2d 201, 210 (5th Cir. 1990). The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech. *See Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 553 (2005) ("[T]he Government's own speech . . . is exempt from First Amendment scrutiny."); *Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 139, n.7 (1973) (Stewart, J., concurring) ("Government is not restrained by the First Amendment from controlling its own expression"). A government entity has the right to "speak for itself." *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000). "[I]t is entitled to say what it wishes," *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 833 (1995), and to select the views that it wants to express. *See Rust v. Sullivan*, 500 U.S. 173, 194 (1991); *Nat'l Endowment for Arts v. Finley*, 524 U.S. 569, 598, (1998) (Scalia, J., concurring in judgment) ("It is the very business of government to favor and disfavor points of view . . . ."). Flag flying represents community and conveys certain messages to the general public that may also convey a government message. *Shurtleff v. City of Boston*, 142 S. Ct. 1583, 1590 (2022).

We conclude, based on the record before us, as well as the non-public nature of the forum involved, that Respondent's display of the pride flag was government speech subject to government regulation without restriction by the First Amendment. Perhaps from her perspective, the display of the pride flag commemorating her ground-breaking investiture was a personal expression of identity and community, but a judicial bench is an indisputably non-public forum from which only the government may speak and a courtroom participant or observer quite understandably views speech therefrom from a different perspective. Upon entering the courtroom of County Court at Law No. 13, one encounters a typical setting: counsel tables, a jury box, a witness seat, court reporter and clerk's stations all separated from the gallery by a bar, and a judge's bench separated and raised above them all. Displayed at and behind the bench are the symbols of government: the American flag, the Texas flag, the seal of Bexar County, and … the pride flag. The judge (an elected official/employee of the state) presides over misdemeanor domestic violence cases which, much like felony cases, begin with a charge brought, "In the name and by authority of the State of Texas." TEX. CODE CRIM. PROC. art. 21.21. When the judge enters the courtroom she performs judicial functions, i.e., impaneling juries, trying cases, pronouncing judgment, and imposing sentences.

"It is axiomatic that a courtroom is not the judge's living room for her to decorate as she pleases. It is the taxpayer's forum for dispensing justice to all citizens – defendants and victims alike." *Simpson v. State*, 447 S.W.3d 264, 269 n.31 (Tex. Crim. App. 2014) (Cochran, J., concurring with refusal of petition for discretionary review) (disapproving of display in courtroom, during a DWI trial, of a Mothers Against Drunk Drivers (MADD) plaque). Similarly, "Although appellant did not show that the jurors at her trial were, in fact, influenced by the MADD plaque, such partisan displays in a public courtroom should be strongly condemned." *Id.* at 270.

In *Berner v. Delahanty*, 129 F.3d 20 (1st Cir. 1997), the First Circuit stated:

> A courthouse—and, especially, a courtroom—is a nonpublic forum. . . . A courtroom's very function is to provide a locus in which civil and criminal disputes can be adjudicated. Within this staid environment, the presiding judge is charged with the responsibility of maintaining proper order and decorum. In carrying out this responsibility, the judge must ensure "that [the] courthouse is a place in which rational reflection and disinterested judgment will not be disrupted." … We think it is beyond serious question that the proper discharge of these responsibilities includes the right (and, indeed, the duty) to limit, to the extent practicable, the appearance of favoritism in judicial proceedings, and particularly, the appearance of political partiality.

Id. at 26 (quoting *Ryan v. County of DuPage*, 45 F.3d 1090, 1095 (7th Cir. 1995)); *see also Huminski v. Corsones*, 396 F.3d 53, 91 (2d Cir. 2005) ("[T]he interior of a courthouse is not a public forum."); *Sammartano v. First Judicial Dist. Ct.*, 303 F.3d 959, 966 (9th Cir. 2002) (holding two floors of government building containing municipal and state courts is a nonpublic forum), *overruled on other grounds by Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *United States v. Gilbert*, 920 F.2d 878, 884 (11th Cir. 1991) (holding interior of federal building is not a public forum).

A Texas courtroom should remain "terrain neutre"[8] to maximize the perception of equality of all litigants and spectators. Whether one agrees or disagrees with the content of Respondent's intended message, it is inappropriate for a Texas courtroom.[9]

Deming Factors

Having established the inapplicability of the First Amendment to this case, we turn again to the *Deming* factors. Stipulations Nos. 3 & 5 state that upon taking the bench, Respondent

[8] "Neutral ground." *Terrain neutre*, DICT.CC, https://m.dict.cc/enfr/?s=terrain+neutre (last visited Nov. 28, 2022).

[9] The de novo review included examples of other flag displays and reflections of personal flair. While not the subject of our review, judges so inclined to personalize their courtroom should be ever mindful of the obligation to maintain courtroom decorum to ensure a neutral, impartial environment dedicated to justice, fairness and equal treatment.

displayed a "pride" flag in her courtroom, approximately 2 feet to the left of the United States and Texas flags, on a shorter flag post, behind her bench.[10] Stipulation No. 7 states that after receiving a tentative sanction from the Commission regarding the flag, the Respondent removed it from her courtroom. The *Deming* factors, like many non-exclusive, multi-factor tests, don't fit the facts exactly. This display, which the Commission alleges constituted misconduct, occurred in Respondent's courtroom, and lasted approximately ten months. The Respondent has appropriately stipulated to these facts, which occurred in her first year of judicial service. Again, the Commission introduced no evidence of any prior complaints against Respondent. The Commission has produced no, or legally insufficient, evidence that the display of the "pride" flag has had any effect on the integrity and respect for the Texas judiciary generally.

Further, there was no pleading, no evidence, or legally insufficient evidence, that Respondent's display of the pride flag rose to the level of willful or persistent conduct clearly inconsistent with the proper performance of her duties as a judge. Respondent credibly testified as to her motivation for displaying the flag. She intended for the display to commemorate her investiture and demonstrate that LGBTQ+ community members will not face discrimination in her courtroom based on their identity. She candidly admitted that, in this regard, she intended to use her position to satisfy her personal desires in displaying the flag.

Respondent displayed the flag in her courtroom and only took it down upon receiving a tentative sanction from the Commission. Presumably, absent the tentative sanction, Respondent would have displayed the flag in her courtroom throughout her service as the Judge of the County

[10]The Commission also noted other small items in Respondent's courtroom: shoes, lapel pins, mousepads, glasses, pens, a sarape/decorative trim on her robe, etc. This kind of de minimis display of personal "flair" was mentioned in the charging instruments, but largely explained by Respondents' testimony as misunderstood by the Commission (the sarape is a cultural/ethnic display, not one of sexual orientation or identity), or of such a minor consequence to be unworthy of attention by either the Commission or this Special Court of Review.

Court at Law No. 13 in San Antonio, Bexar County, Texas. However, as noted above, Respondent has argued that this was private speech, not government speech. While we disagree, the Special Court of Review does not find such an argument to be frivolous, nor has the Commission so argued; and we find credible Respondent's explanation of her intent to encourage commemoration and community.

After considering all of the evidence presented in the trial de novo with regard to CJC 19-1038, CJC 19-1736, & CJC 20-0121, this Special Court of Review finds that the credible evidence preponderates in favor of a finding that Respondent did not willfully violate Canons 2(B), 3(B)(2), 3(B)(6), or 4(A)(1) of the Code of Judicial Conduct or Article V, Section 1–a(6)(A) of the Texas constitution.[11]

Conclusion

We conclude the Commission has failed to meet its burden of proving the Respondent willfully violated the Canons of Judicial Conduct or Article V, Section 1–a(6)(A) of the Texas constitution. We dismiss the Commission's Public Warning and Order of Additional Education and Private Warning and Order of Additional Education, and find Respondent not guilty of all charges. *See* Tex. Rules Rem'l/Ret. Judg. R. 9(d).

[11]Respondent also challenges the constitutionality of Canon 2(B), but we need not decide this question and offer no opinion thereupon. *See In re Slaughter*, 480 S.W.3d at 855 n.2 (citing *Hecht*, 213 S.W.3d at 551-52).