

Judgment and Public Admonition Issued July 24, 2018.



DOCKET NO. SCR 18-0006

SPECIAL COURT OF REVIEW

IN RE INQUIRY CONCERNING HONORABLE JOHN ROACH, JR.

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JUDGMENT AND PUBLIC ADMONITION

The Special Court of Review has considered the pleadings, the evidence, and the arguments of counsel and finds that the Honorable John Roach, Jr. willfully violated Canons 2B and 4D(1) of the Code of Judicial Conduct and article V, section 1-a(6)(A) of the Texas Constitution as alleged in Charges I and II by lending the prestige of his office and exploiting his position as a judge to further the private interests of himself and his wife. The appropriate sanction for this conduct is a **Public Admonition**.

The Special Court of Review finds the Honorable John Roach, Jr. not guilty insofar as Charge II alleges that he engaged in activities involving him in frequent transactions with persons likely to come before his court. The Court finds the Honorable John Roach, Jr. not guilty of violating article V, section 1-a(6)(A) of the Texas Constitution as alleged in Charge III.

SPECIAL COURT OF REVIEW¹

¹ The Special Court of Review consists of The Honorable William J. Boyce, Justice of the Fourteenth Court of Appeals, presiding by appointment; The Honorable Nora Longoria, Justice of the Thirteenth Court of Appeals, participating by appointment; and The Honorable Luz Elena Chapa, Justice of the Fourth Court of Appeals, participating by appointment.

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OPINION

This case addresses Judge John Roach, Jr.’s activities in connection with (1) a law-related book discussing divorce litigation, which he co-wrote and published with his attorney wife; (2) a referral service run by his wife to connect potential clients with attorneys who focus on divorce-related matters; and (3) a website for the referral service that offered the book for sale.

The State Commission on Judicial Conduct received complaints in June 2016 regarding these activities and notified Judge Roach in May 2017. It subsequently convened an informal hearing and determined in February 2018 that Judge Roach should receive a public warning. *See* Tex. Gov’t Code Ann. § 33.001(a)(10) (Vernon Supp. 2017).

Judge Roach requested a review of the Commission’s determination and the Supreme Court of Texas selected a court of review. *See id.* § 33.034 (Vernon Supp.

2017) (authorizing judge who receives “a sanction or censure” to seek “review of the commission’s decision,” discussing scope of review, and setting out procedures for selecting court of review).¹

The Commission contends in Charges I and II that Judge Roach’s activities in connection with the book, the referral service, and the website violated Canons 2B and 4D(1) of the Texas Code of Judicial Conduct. *See* Tex. Const. art. V, § 1-a(6)(A); Tex. Code Jud. Conduct, Canon 2B, 4D(1), *reprinted in* Tex. Gov’t Code Ann., tit. 2, subtit. G, app. B (Vernon 2013). It contends that Judge Roach violated these canons by lending the prestige of his office and exploiting his position as a judge to further the private interests of himself and his wife. It further contends that Judge Roach’s activities involved him in frequent transactions with persons likely to come before his court.

The Commission contends in Charge III that Judge Roach violated section 1-a(6)(A) of article V of the Texas Constitution because statements in the book regarding the divorce process and judicial system cast discredit upon the judiciary, and because he “actively encourag[ed] . . . people contemplating divorce to avoid court and purchase his Book instead.”

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The parties participated in a trial de novo on May 29, 2018, at which Judge Roach was the only witness. *See* Tex. Gov't Code Ann. § 33.034(e)(2). Having considered the parties' evidence and arguments, the court of review issues this timely decision. *See id.* § 33.034(h); *see also* Tex. R. Rem'l/Ret. Judg. 9(d) (West 2018) (specifying that decision by special court of review "may include dismissal, affirmation of the Commission's decision, imposition of a lesser or greater sanction, or order to the Commission to file formal proceedings").

We conclude that Judge Roach willfully violated Canons 2B and 4D(1) of the Code of Judicial Conduct and article V, section 1-a(6)(A) of the Texas Constitution as alleged in Charges I and II by lending the prestige of his office and exploiting his position as a judge to further the private interests of himself and his wife. The appropriate sanction for this conduct is a public admonition.

We find Judge Roach not guilty insofar as Charge II alleges that he engaged in activities involving him in frequent transactions with persons likely to come before his court. We find Judge Roach not guilty of violating article V, section 1-a(6)(A) of the Texas Constitution as alleged in Charge III.

BACKGROUND

John Roach, Jr. has served as the presiding judge of the 296th District Court of Collin County since 2007. His wife, Laura Roach, is an attorney who devotes

about 80 percent of her practice to conducting mediations in family law cases. Together they conceived and launched a multi-faceted project aimed at spouses contemplating or seeking a divorce. This project, which we refer to collectively as “Divorce in Peace,” had three interconnected components: (1) a book; (2) a referral service that allowed potential clients to identify and contact attorneys; and (3) a website.

I. The Book

Judge Roach and Laura Roach co-authored a 212-page book entitled *Divorce in Peace*. The book includes this subtitle on the front cover: *Alternatives to War from a Judge and Lawyer*. It also includes 122 pages of appendices and a 15-page glossary of legal terms.

Judge Roach testified that he wrote the book to promote the use of alternative dispute resolution in divorce cases, not to make money. He also testified that he conducted legal research to determine the permissible limits of his actions as a sitting district judge in writing, publishing, and marketing a law-related book; he did not contact the Commission, the State Bar of Texas, or persons with expertise in judicial ethics as part of this research.

The book’s front cover lists “John and Laura Roach” as authors. The back cover features a photo of the authors together next to this statement: “John and Laura

have spent their careers, as lawyers and a judge, trying to help couples avoid the pitfalls of high conflict divorces.” An “About the Authors” section at the book’s beginning describes John Roach as “a Texas district court judge with a true passion for the law” and states that, “[a]s a judge, he has had a front row seat to over 10,000 family law cases.” The book’s text does not refer to “Judge John Roach” or “Judge Roach.”

Among other things, the *Divorce in Peace* book describes how “The Family Court System” operates. It advises couples contemplating or seeking a divorce to consider using alternative dispute resolution as “a more productive way to end your marriage” and “a path to a peaceful divorce” that reduces the expense and emotional toll of divorce litigation. It describes how various alternative dispute resolution procedures operate in contrast to procedures used as part of a divorce trial. Interspersed throughout the book are sections entitled “Judge’s Perspective” and “Mediator’s Perspective” offering additional comment on particular topics.

The book’s introduction states: “[W]e think it is crucial for couples who want to *Divorce in Peace* to find like-minded professionals — attorneys, financial planners, mental health professionals and others — who are committed to the same principles of peaceful resolution. These professionals are listed at our website, www.divorceinpeace.com.”

II. The Client Referral Service and Website

Helping couples find “like-minded professionals” was accomplished through a for-profit entity called “DivorceinPeace LLC,” which we refer to as DIP LLC. Laura Roach is DIP LLC’s registered agent, only member, and designated “managing member.” Judge Roach is not a member of DIP LLC and disclaims any ownership of the LLC. He testified that Laura Roach spent approximately \$50,000 in community assets to create and launch DIP LLC.

DIP LLC owns rights to the website www.divorceinpeace.com. As described by Judge Roach, DIP LLC operated both the website “and a referral service for all manner of professionals that serve persons seeking a divorce.”

The www.divorceinpeace.com website offered a free online listing to participating “Divorce in Peace Professionals” including a photo, resume, practice-area description, and email address so that potential clients could contact them. Fee-based subscription options for Divorce in Peace Professionals also were offered ranging from \$59.99 per month to \$199 per month. Subscribers who chose the fee-based options were allowed to post additional information online via the www.divorceinpeace.com website such as client reviews, blog posts, articles, and videos.

The www.divorceinpeace.com website offered the *Divorce in Peace* book for purchase online. In turn, the book contains 11 references inviting readers to visit www.divorceinpeace.com for help in finding attorneys “who are familiar with the low-stress methods of dissolving a marriage” along with mediators, financial planners, marriage counselors, and real estate agents. Judge Roach testified that one goal behind the book was to encourage people contemplating divorce to visit the website.

DIP LLC was created in September 2015. The book was published in print and electronic formats in May 2016. Although the chronology is not completely clear from the evidence, the website appears to have been “live” online from spring 2016 until it was disabled in early 2018. DIP LLC still exists as a legal entity but has not been active since May 2017. The book still was available for purchase on www.amazon.com and www.barnesandnoble.com as of the date of trial. About 200 copies have been sold.

At least four attorneys, and perhaps as many as eight or more, signed up as subscribing “Divorce in Peace Professionals” appearing on the www.divorceinpeace.com website. Judge Roach testified that he did not know whether any of the subscribing attorneys had appeared in his court. He also testified that the subscribing attorneys used Laura Roach as a mediator; Judge Roach himself did not contact potential subscribers.

The Commission alleges that the website generated approximately \$22,000 in revenue from subscribers to the client referral service. No testimony was elicited to support this figure during the trial de novo; Judge Roach testified that he “[d]idn’t make any money” based on referrals of people who visited the website.

III. Marketing Activities

Judge Roach participated in various marketing activities in connection with the Divorce in Peace project. He contends the public aspects of his marketing activities focused on the book itself rather than the DIP LLC client referral service and website. According to Judge Roach, the book could “stand . . . alone;” the website also could “stand . . . alone” in support of his wife’s activities related to DIP LLC.

Judge Roach testified that he did not participate publicly in marketing the client referral service or website. He did participate behind the scenes by working with marketers and website developers to (1) create the look and functions of the www.divorceinpeace.com website; and (2) launch a separate “landing pad” website used solely for the book. He also promoted the book by appearing on television and radio, in newspapers, and at least one conference.

Substantial testimony during the trial de novo centered on Divorce in Peace marketing efforts involving (1) a paper brochure distributed via the United States

Postal Service; and (2) a series of videos that were accessible online via the www.divorceinpeace.com website and YouTube.

The brochure was mailed to some 18,000 recipients at approximately the same time the book was published in May 2016. About 12,000 of these recipients were Texas attorneys who identified family law as their primary practice area with the State Bar of Texas.

The www.divorceinpeace.com website address appears in multiple locations on the brochure, which contains this statement: “Clients are Looking to Divorce in Peace . . . Can They Find You?” It further states: “Let them find you on the Divorce in Peace Attorney Network.”

The brochure describes benefits available at various subscription levels for attorney participants in the network. It also shows the front cover of the *Divorce in Peace* book next to a photo of John and Laura Roach. The return mailing address lists the sender as “Divorce in Peace” with a street address in Frisco, Texas.

The brochure mailing was contracted out to a third party vendor. Judge Roach was generally aware of the mailing and its target audience including Texas attorneys who identified themselves with the State Bar of Texas as family law practitioners.

Judge Roach also testified regarding a series of promotional videos made in connection with the Divorce in Peace project, which were admitted into evidence at trial.

- Exhibit 5, entitled “About Us,” features Judge Roach and Laura Roach along with a picture of a gavel. Judge Roach discusses his expertise as an elected state district court judge who has presided over 10,000 family law cases.
- Exhibit 6, entitled “Ask Us,” features Judge Roach and invites viewers to submit questions on the website. Judge Roach states: “If you’d like to do some research on your own, we suggest that you start by buying our book, *Divorce in Peace*.”
- Exhibit 7, entitled “Attorney Packages,” features Laura Roach describing the various marketing packages available to subscribing attorneys and professionals.
- Exhibit 8, entitled “Learn More About Us,” features Judge Roach inviting viewers to buy the *Divorce in Peace* book. This video also describes the information available through Divorce in Peace blogs and articles written by attorneys and other professionals.
- Exhibit 9, entitled “Divorce in Peace Professional Network,” features Laura Roach discussing why subscribing professionals “should . . . choose to partner with us.” The “us” refers to Judge Roach and Laura Roach.

- Exhibit 10, entitled “Find Out More,” features Laura Roach and references a time “[w]hen John and I were writing our book and building this website.”
- Exhibit 13, entitled “Welcome Attorneys,” features Laura Roach and states: “[W]e are looking for attorneys that want to become a part of a network” The “we” refers to Judge Roach and Laura Roach. This video also invites prospective subscribers to “partner with us today.”
- Exhibit 14, entitled “Welcome Clients,” features Judge Roach and Laura Roach. In it, Judge Roach refers to potential clients finding “an attorney or other divorce professional from our network.”

Judge Roach testified that he was not comfortable with the videos after viewing them and did not use them because of his concerns that portions may have violated the canons. He further testified that it is not appropriate for a sitting district court judge to “partner” with attorneys or other professionals in this manner, and that he decided not to use these videos for this reason.

Despite this decision, the public nonetheless was able to access these videos online via the www.divorceinpeace.com website for approximately 30 days. The record is not clear on exactly when this 30-day window occurred or whether any members of the public actually accessed these videos via the website during this window. Testimony suggests these videos were accessible to the public via the Divorce in Peace website at some point during spring 2016.

Judge Roach testified that these videos are “beta” versions that were used to test functionality during the website’s development stage, and that they briefly were accessible to the public before Divorce in Peace marketing and promotional activities began. Evidence suggests those activities began in spring 2016. After he decided not to use these “beta” version videos on the website, other videos featuring only Laura Roach were used instead on the website and were accessible to the public online until the website was disabled in early 2018.

Judge Roach could not rule out the possibility that Divorce in Peace videos featuring him in a speaking role were accessible online to the public on the “live” Divorce in Peace website for a limited but undetermined period of time.

Judge Roach testified that these “beta” test videos also had been accessible online to the public on YouTube, and still were accessible via YouTube as of the date of trial in May 2018, because they were placed there by a production company in India that helped to create them. According to Judge Roach, his repeated efforts to remove these videos from YouTube have been unsuccessful because he lacks the user name and password necessary to take them down and cannot obtain this information from the videos’ creator. He further testified that he and Laura Roach have continued to pursue avenues to have these videos removed from YouTube.

PROCEDURES GOVERNING THE SPECIAL COURT OF REVIEW

A judge is subject to discipline “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 his duties or casts public discredit upon the judiciary or administration of justice.” Tex. Const. art. V, § 1-a(6)(A).

“After such investigation as it deems necessary, the Commission may in its discretion issue a private or public admonition, warning, reprimand, or requirement that the person obtain additional training or education,” or “institute formal proceedings . . . concerning a person holding” a judicial office. *Id.* § 1-a(8). This matter involves informal proceedings resulting in a public warning directed at Judge Roach.

The specific consequences that the Commission may impose as a result of informal proceedings are collectively referred to as “sanctions” in Chapter 33 of the Government Code, which governs the Commission. *See* Tex. Gov’t Code Ann. § 33.001(a)(10). If any of these sanctions are imposed following informal proceedings, then the judge may request review of the sanction by a special court of review. *Id.*

“Except as otherwise provided by this section, the procedure for the review of a sanction issued in an informal proceeding 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). Accordingly, the Commission bears “the burden to prove the charges against” Judge Roach “by a preponderance of the evidence.” *In re Sharp*, 480 S.W.3d 829, 833 (Tex. Spec. Ct. Rev. 2013); *see also In re Hecht*, 213 S.W.3d 547, 560 (Tex. Spec. Ct. Rev. 2006).

Review of a sanction issued in an informal proceeding is by trial de novo. Tex. Gov’t Code Ann. § 33.034(e)(2).

We note that the Commission’s function “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); *see also In re Slaughter*, 480 S.W.3d 842, 845 (Tex. Spec. Ct. Rev. 2015) (per curiam). Similarly, this court is not charged with punishing but with providing guidance to judges and protection to the public. *In re Davis*, 82 S.W.3d 140, 150 (Tex. Spec. Ct. Rev. 2002).

ANALYSIS

The Commission brings three charges.

Charge I alleges that “Judge Roach violated Canon 2B’s mandate that he not lend the prestige of his judicial office to advance the private interests of himself or others by referencing his judicial title and position on numerous occasions in support of Divorceinpeace, LLC, the Website and the Book.” This charge requires proof that Judge Roach acted willfully. *See* Tex. Const. art. V, § 1-a(6)(A).

Charge II alleges that “Judge Roach’s involvement, support and promotion of Divorceinpeace, LLC’s pursuit of customers for his Book and subscribers for the ‘referral service’ violated Canon 4D(1)’s mandate that he refrain from financial and business dealings that . . . exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before his court.” This charge also requires proof that Judge Roach acted willfully. *See id.*

Charge III alleges that “[b]y actively encouraging people contemplating divorce to avoid court and to purchase his Book instead, Judge Roach engaged in willful and persistent conduct that is clearly inconsistent with the proper performance of his duties and cast public discredit upon the judiciary and/or the administration of justice in violation of Article V, Section 1-a(6) of the Texas Constitution.”

In this context — which does not involve an asserted legal error committed in the course of the judge’s case-handling responsibilities — “[w]illful conduct

requires a showing of intentional or grossly indifferent misuse of judicial office, involving more than an error of judgment or lack of diligence.” *In re Sharp*, 480 S.W.3d at 833. “A judge need not have specifically intended to violate the Code of Judicial Conduct; a willful violation occurs if the judge intended to engage in the conduct for which he or she is disciplined.” *Id.*; *see also In re Slaughter*, 480 S.W.3d at 848, and *In re Davis*, 82 S.W.3d at 148; *cf. In re Ginsberg*, No. 18-0001, 2018 WL 2994940, at *3-5 (Tex. Spec. Ct. Rev. June 11, 2018) (distinguishing between willfulness standard applied “[i]n judicial misconduct cases generally” involving non-legal error and willfulness standard applicable when alleged misconduct is based on an asserted legal error committed in the course of a judge’s case-handling responsibilities).

“Persistent” conduct has been defined as conduct that “demonstrates a series of associated efforts and determination which is insistently repetitive or continuous.” *In re Ginsberg*, 2018 WL 2994940, at *3 (quoting *In re Barr*, 13 S.W.3d 525, 558-59 (Tex. Rev. Trib. 1998, no appeal)).

We now apply these precepts to the specific charges at issue.

I. Charge III Alleging a Violation of Article V, Section 1-a(6)(A)

We begin with the third charge because its disposition is straightforward.

The Commission contends that Judge Roach cast public discredit upon the judiciary in the book when “comparing a court experience to gambling, and indicating that appeals options were essentially meaningless.” This contention focuses on two specific statements in the *Divorce in Peace* book.

The first statement appears on page 18 in a section of the book entitled, “Judge’s Perspective Gambling Away Your Money and Your Kids.” The Commission challenges this statement: “Going to court is like going to Vegas.” The remaining portion of this section develops this theme by comparing the risks of a divorce trial to betting “your life savings on a spin of the roulette wheel” and “playing high-stakes poker using your kids as the chips.” This section also states as follows: “While attorneys can certainly advise you on your odds of winning, no one can predict how your case will ultimately be decided.” It continues: “The judge is human and makes decisions based on certain beliefs about what is best.”

The second statement is an excerpt appearing on page 112 and asserting that “most family law appeals do not change a court’s decision.” This excerpt appears in a section entitled “Judge’s Perspective Putting Your Life Story on Stage.” Among other things, this section discusses the pros and cons of choosing private arbitration over a courtroom trial that is open to the public. The challenged excerpt appears in the context of these statements: “The only downside to Arbitration is that the

arbitrator's decision is not generally subject to appeal. But in all honesty, most family law appeals do not change a court's decision."

The Commission acknowledges that "a judge is allowed to write a book, and a judge is allowed to encourage alternative dispute resolution." The Commission nonetheless contends that "it is not appropriate for a judge to be setting up a business model that benefits from scaring people away from going to court."

For his part, Judge Roach invokes Canon 4B(1)'s pronouncement that "[a] judge may . . . speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code" He points to a plethora of books written by sitting judges in Texas and across the country addressing various aspects of law, the courts, and the administration of justice. He also notes that "[i]t is the official policy of the state of Texas to encourage ADR, particularly in family law cases."

We agree with Judge Roach that Charge III is insupportable on this record.

A partial explanation for this conclusion is that making two statements containing about two dozen words as part of a 212-page book is difficult to characterize as "persistent" activity.

More fundamentally, the two challenged statements do not rise to the level of misconduct. We need not map the outer boundaries of a sitting judge’s free speech rights in order to conclude that the two specific statements identified by the Commission — “Going to court is like going to Vegas” and “most family law appeals do not change a court’s decision” — do not cast public discredit upon the judiciary or the administration of justice.

These two statements are not inflammatory or inappropriate when viewed in isolation. The first aptly describes the risks inherent in litigation using a common gambling analogy. The second describes in plain terms the difficulty of obtaining appellate relief following an unfavorable trial court result. Allowing innocuous statements like these to become fodder for disciplinary proceedings threatens to chill permissible judicial commentary on the law and the legal system in contravention of Canon 4B(1).

These statements become even less subject to controversy when viewed in light of surrounding text and the book as a whole. This book fully aligns with Texas public policy when it advocates using alternative dispute resolution procedures for family law cases. *See* Tex. Civ. Prac. & Rem. Code Ann. § 154.002 (Vernon 2011) (“It is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including the mediation of issues involving conservatorship, possession, and support

of children, and the early settlement of pending litigation through voluntary settlement procedures.”).

The Commission’s real complaint focuses less on the content of these two statements and more on their presence in a book linked to other aspects of the Divorce in Peace project.

The Commission acknowledges as much when it states that “[i]n isolation, these statements alone may not be worthy of public discipline.” The Commission’s concern lies elsewhere: “[W]hen made in the context of the promotion of the alternative offered by ‘our website’ — divorceinpeace.com — Examiners respectfully submit that Respondent’s statements are not merely educational or advisory. Instead, they represent another component of the marketing for the Divorce in Peace brand.” The Commission asserts that the book “conveys a clear message to the reader contemplating divorce to avoid court and go to the Website instead, which directly and indirectly benefits Respondent through his community interest in his wife’s estate.” The Commission characterizes the “Divorce in Peace Enterprise” as “a team effort between Judge John Roach and his wife, Laura.”

We believe these contentions are more appropriately addressed in conjunction with the parties’ arguments under Canons 2B and 4D(1). The book’s two challenged statements themselves are not a viable basis for informal sanctions because the

words they contain do not cast public discredit upon the judiciary or the administration of justice.

II. Charges I and II Alleging Violations of Canons 2B and 4D(1)

We begin our analysis under Canons 2B and 4D(1) by addressing Judge Roach’s contention that the *Divorce in Peace* book is a stand-alone undertaking separated from the www.divorceinpeace.com website by a “brick wall.”

We disagree with this contention because all three components of the Divorce in Peace project were linked. The DIP LLC client referral service offered paid subscriptions for attorneys and operated via the website; the website sold the book; and the book directed readers back to the website so they could find subscribing attorneys using DIP LLC’s referral service.

The issue to be addressed is whether Judge Roach’s participation in aspects of this interconnected project ran afoul of Canons 2B or 4D(1).

John Roach is identified as one of the book’s two authors. Although he is never referred to as “Judge John Roach” or “Judge Roach” in the book, his judicial role is readily apparent based on the first eight words of the book’s “About the Authors” section appearing immediately after the table of contents: “John Roach is a Texas district court judge” Little effort is required for readers to discern that

the “Judge” referenced on the front and back covers is John Roach, and that the “Judge’s Perspective” highlighted throughout the book comes from him.

Judge Roach participated in public interviews and presentations in an effort to sell the book. He is pictured (but not identified as a judge) on the Divorce in Peace referral service brochure that was mailed to 12,000 attorneys listed by the State Bar of Texas as practicing in the area of family law. This brochure repeatedly references the www.divorceinpeace.com website. He worked behind the scenes with marketers and website developers to design and launch the www.divorceinpeace.com website. Judge Roach appeared on the website; it is not clear from the record whether he was identified as a judge on the website.

Judge Roach appeared or was referenced in a series in promotional videos. Judge Roach is explicitly identified as a judge in at least one video. This video also shows a picture of a gavel. At least two of the videos invite prospective client referral service subscribers to “partner with” Judge Roach and Laura Roach. The videos were publicly accessible online via the www.divorceinpeace.com website for about 30 days in 2016 before they were removed. These videos still were available online via YouTube as of May 29, 2018, although evidence suggests that they have been visited only infrequently — and a portion of those visits arose directly from these special court of review proceedings.

There is no evidence that Judge Roach was photographed in his robe as part of his activities in connection with the book and website. There is no evidence that any of the book purchasers, brochure recipients, subscribers, website visitors, or persons who saw the videos appeared in Judge Roach's court. There also is no evidence that Judge Roach's activities involved him in frequent transactions with persons likely to come before his court.

We assess this evidence in light of Canons 2B and 4D(1).

Canon 2B provides as follows in pertinent part: "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others." Tex. Code Jud. Conduct, Canon 2B. "Canon 2B prohibits a judge from using the prestige of judicial office to pursue 'private interests' such as using the position of judge to extort a financial benefit, to retaliate against another, or to obtain preferential treatment for the judge or another person." *In re Hecht*, 213 S.W.3d at 578. "[A] private interest pursuant to Canon 2B is a personal or individual advantage or benefit gained by use of judicial office." *Id.* at 577.

Canon 4D(1) provides as follows in pertinent part: "A judge shall refrain from financial and business dealings that . . . exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves." Tex. Code Jud. Conduct, Canon 4D(1).

The Commission contends that Judge Roach’s references to “his status as a judge in the promotion of the Book and the Divorce in Peace Professional Network were inarguably intended to lend the prestige of his office for the benefit of the Divorce in Peace enterprise, and exploited his judicial position, in direct violation of Canons 2B and 4D(1).” It also contends that “[i]nsofar as Respondent’s marketing efforts were intended to benefit his wife’s direct interest in the Divorce in Peace enterprise, the[y] also benefit his own interests via their marital estate.”

For his part, Judge Roach disputes any contention that “limited references to the website somehow render the book a mere marketing pamphlet for the website, ignoring the 350 pages of content.” He further argues as follows: “The testimony demonstrates that there was no financial gain from readers of the book visiting the website because the book was aimed at those contemplating divorce rather than professionals, and non-professionals were never charged anything for visiting the website, nor were there any subscriptions for non-professionals.” This argument misses the mark because the Divorce in Peace project was structured to create a financial gain arising from attorneys who paid for subscriptions in hopes of being hired by readers who acted on the book’s multiple invitations to visit the website and find Divorce in Peace-affiliated attorneys.

Canon 2B is violated when the judge individually wields an advantage or receives a benefit obtained through impermissible use of the office’s title and

prestige. *See, e.g., In re Davis*, 82 S.W.3d at 150 (using position of judge to retaliate against an assistant district attorney); *Public Reprimand of Ken Reilly, Municipal Court Judge*, No. 04-0360-MU (Tex. Comm. Jud. Conduct Nov. 2, 2004) (part-time municipal judge who served one-half day per month advertised his public-speaking private business, which was his primary occupation, with statements like “Bring ‘The Judge’ to your next meeting as a keynoter”); *Public Admonition of Frederick Edwards, District Court Judge* (Tex. Comm. Jud. Conduct Apr. 12, 2001) (judge used position in attempt to avoid arrest and prosecution); *Public Reprimand of Marvin Mitchell, Former Justice of the Peace* (Tex. Comm. Jud. Conduct Aug. 18, 2000) (judge telephoned girls on probation in his court for truancy and engaged in explicit sexual conversations); *Public Admonition of Don Jarvis, County Court at Law Judge* (Tex. Comm. Jud. Conduct Oct. 22, 1999) (judge became romantically involved with married woman who had matters pending in the judge’s court).

Canon 2B also is violated when a third party receives the advantage or benefit obtained through impermissible use of the judicial office’s title and prestige. *See, e.g., In re Sharp*, 480 S.W.3d at 834-35 (“Justice Sharp willfully violated Canon 2B by lending the prestige of his judicial office during his effort to secure the release of his acquaintance’s daughter from the Juvenile Center.”); *see also Private Admonition of a County Court at Law Judge* (Tex. Comm. Jud. Conduct Mar. 6, 2006) (state judge used official court letterhead to write letter to federal judge

requesting leniency in sentencing state judge's relatives); *Public Reprimand and Order of Additional Education of Santos Benavides, Justice of the Peace*, Nos. 04-0513-JP, 04-0514-JP (Tex. Comm. Jud. Conduct Nov. 2, 2004) (judge ordered felon arrestee released on personal recognizance bond because arrestee was son of 25-year acquaintance of judge); *Public Admonition of Alonzo Villarreal, Justice of the Peace*, No. 04-0285-JP (Tex. Comm. Jud. Conduct June 25, 2004) (judge contacted municipal judge about another person's traffic ticket; when municipal judge said that was inappropriate use of judicial office, judge said "we judges help each other"); *Public Admonition of Jose Canales, Justice of the Peace* (Tex. Comm. Jud. Conduct June 27, 2003) (judge telephoned another judge to obtain favorable treatment for county official's daughter on traffic citation).

Many decisions in this area address judicial intervention in a discrete court matter or a particular event such as an arrest. The guidance regarding ongoing business dealings involving a judge or a judge's family member is more limited and highly context-sensitive. It is useful to envision a spectrum involving various types of conduct.

On one end of the spectrum are plainly impermissible situations involving a judge who directly uses his or her authority over litigants to coerce actions that will benefit the judge financially. For example, a sitting family law master violated Canon 2B when he engaged in ex parte communications with a couple who

previously appeared before him in court seeking to reduce the father’s child support obligations due to an illness that diminished his earning capacity. *See In re Phalen*, 475 S.E.2d 327, 329, 332-33(W. Va. 1996). The family law master subsequently visited the father in person at the father’s home and “attempted to get him to agree to become a sales representative for Amway.” *Id.* at 329. “The family law master next telephoned the wife and attempted to gain her interest in selling Amway products.” *Id.* This conduct violated Canon 2B because “Mr. Phalen had a direct monetary interest in recruiting people to sell Amway products” and “the litigants knew of Mr. Phalen only because of his position as a family law master.” *Id.* at 333. “Using the prestige of the office of family law master to recruit Amway ‘cogs’ is categorically improper and intolerable.” *Id.*; *see also In re Gardner*, 5 N.E.3d 1163, 1164-65 (Ind. 2014) (judge violated Canon 2B by, among other things, directing first-time traffic offenders in her court to attend and pay fees for a defensive driving course offered by a company owned by the judge and run by her father).

At the spectrum’s other end, the Commission acknowledges that judges are permitted to write and publish books on legal and non-legal topics; identify themselves as judges in biographical descriptions; and sell books they have written so long as they do not exploit the judicial title in doing so. These acts involve a financial interest on the part of a judge who wants to sell books, but do not by themselves violate Canons 2B or 4D(1).

This case falls in the middle of the spectrum.

The circumstances here do not involve egregious conduct of the nature described in *Phalen* and *Gardner*. There is no allegation or evidence that Judge Roach directed coercive conduct towards litigants or attorneys appearing in his court to compel actions from which he stood to benefit financially.

And yet, these circumstances involve more than individual sales of a law-related book written by a judge.

The *Divorce in Peace* book was tied explicitly to a subscription-based client referral service for attorneys and the website through which that service operated. The book encouraged its readers — who are envisioned to be prospective clients in need of attorneys and other professionals involved in divorce litigation — to visit the website and use the referral service. Some 12,000 Texas family law attorneys received a brochure touting the referral service, website, and book. The brochure urged these attorneys to “let [clients] . . . find you on the Divorce in Peace Attorney Network.” A promotional video accessible online identified John Roach as a judge and included a gavel; other videos invited attorneys to subscribe and “partner with” Judge Roach and Laura Roach in the Divorce in Peace project. Attorneys did so by participating in the client referral service as “Divorce in Peace Professionals.” Through DIP LLC, Laura Roach stood to benefit directly from subscription sales to

attorneys generated by these joint marketing efforts. Judge Roach stood to benefit as well.

We conclude that the Commission has established a willful violation of Canons 2B and 4D(1) based on these circumstances because the limits established by these canons encompass more than the directly coercive conduct evidenced in *Phalen* and *Gardner*. These limits also reach circumstances like those present here that are not directly coercive but nonetheless involve use of the judicial office to promote the financial interests of a judge or a judge's family member. Judge Roach's activities exceeded these limits. *See, e.g.*, Comm. on Jud. Ethics, State Bar of Tex., Op. 221 (1998) (Canons 2B and 4D(1) prohibit constitutional county judge from becoming an independent agent to sell products and services for a communications company and receiving a commission; "[e]ven though a judge may attempt to separate two careers, when a judge is an independent agent selling products or services . . . he may lend the prestige of his office to that position and thereby advance the private interest of himself or his company"); Comm. on Jud. Ethics, State Bar of Tex., Op. No. 211 (1997) (Canons 2B and 4D(1) preclude justice of the peace from making telephone calls and sending letters to debtors on behalf of a collection agency even if judge's status is not mentioned and a different judge would hear any suits to collect the debts); Comm. on Jud. Ethics, State Bar of Tex., Op. No. 179 (1995) (Canon 2B was violated by arrangement in which lawyers who

practiced in judge's court paid rent for space in an office owned by a trust created to benefit judge's minor children; "[a]lthough the judge has made all efforts to remove himself from the management, control or involvement in the operation of the trust, the fact remains that his children are directly benefitting from the rents paid by lawyers who regularly appear before the judge"); Comm. on Jud. Ethics, State Bar of Tex., Op. No. 141 (1991) (Canons 2B and 4D(1) preclude a judge from serving as chair and a member of a committee to encourage and expand economic development and historical restoration of downtown area in which the judge owns real property; the "judge's participation . . . in sponsoring a project that may benefit the judge and that depends upon fund raising would create the appearance of using the prestige of judicial office for the benefit of the owners of the downtown property, including the judge.").

We now turn to the question of assessing an appropriate sanction for this violation.

III. Appropriate Sanction

"Upon a finding of judicial misconduct, the imposition of sanctions must necessarily be decided on a case-by-case basis." *In re Canales*, 113 S.W.3d 56, 73 (Tex. Rev. Trib. 2003, pet. denied). The discipline imposed "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.”
Tex. Code Jud. Conduct, Canon 8A.

In determining whether a particular sanction is appropriate, the court “must remain mindful that the primary purpose of the Texas Code of Judicial Conduct, and all its ancillary rules, is to protect the citizens of Texas, rather than to discipline judges.” *Canales*, 113 S.W.3d at 73. Furthermore, “[t]he 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.” *In re Barr*, 13 S.W.3d at 560 (quoting *In re Kneifl*, 351 N.W.2d 693, 700 (Neb. 1984)). “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.” *Id.* (quoting *In re Kneifl*, 351 N.W.2d at 700).

After an informal proceeding, the Judicial Conduct Commission may address judicial misconduct by (1) ordering additional education; (2) issuing a private sanction; or (3) issuing a public sanction. Tex. Gov’t Code Ann. § 33.001(a)(1). Ranked in order of increasing severity, private and public sanctions can include admonitions, warnings, and reprimands. *Id.*; see also *Frequently Asked Questions*, Office of State Commission on Judicial Conduct, <http://www.scjc.texas.gov/faqs/>.

“A reprimand is the most severe sanction available to the commission unless formal proceedings are voted.” State Commission on Judicial Conduct 2000 Annual Report, 64 Tex. B.J. 298, 302 (March 2001). “A warning puts the judge on notice that the actions identified in the sanction are improper.” *Id.* “An admonition is the lowest level sanction.” *Id.*

When determining an appropriate sanction, courts have considered the following factors:

(a) whether the misconduct is an isolated instance or evidenced a pattern of conduct; (b) the nature, extent and frequency of occurrence of the acts of misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge’s official capacity or in his private life; (e) whether the judge has acknowledged or recognized that the acts occurred; (f) whether the judge has evidenced an effort to change or modify his conduct; (g) the length of service on the bench; (h) whether there have been prior complaints about this judge; (i) the effect the misconduct has upon the integrity of and respect for the judiciary; and (j) the extent to which the judge exploited his position to satisfy his personal desires.

In re Deming, 736 P.2d 639, 659 (Wash. 1987); *see also In re Rose*, 144 S.W.3d 661, 733 (Tex. Rev. Trib. 2004, no appeal) (referring to *Deming* factors), and *In re Sharp*, 480 S.W.3d at 839 (same).

“Misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct.” *In re Rose*, 144 S.W.3d at 733 (quoting *In re Brown*, 626 N.W.2d 403, 405 (Mich. 2001)); *see also In re Casey*, SCR 17-0001

(Spec. Ct. Rev. May 9, 2017) (judge engaged in improper sexual relationship with former chief clerk; issuing a public reprimand, court noted that “the misconduct was not an isolated incident but was instead a pattern of conduct” and “occur[ed] in the courthouse offices and often during work hours”); *In re Mullin*, SCR 15-0002 (Spec. Ct. Rev. Oct. 21, 2015) (judge “failed to treat attorneys and defendants appearing in her courtroom” with “dignity, patience, and courtesy;” issuing a public reprimand, court noted the judge’s “recurring behavior” that “establish[ed] a persistent course of conduct . . . that is fundamentally inconsistent with the high standards by which a Texas judge is expected to behave”); *In re Davis*, 82 S.W.3d at 148 (judge publicly humiliated young attorney in attempt to have attorney removed from his courtroom; issuing public reprimand, court concluded that judge “engaged in willful or persistent conduct clearly inconsistent with proper performance of duties, or conduct that cast public discredit on the judiciary and the administration of justice”).

The following circumstances inform our assessment of an appropriate sanction in this case.

- The public warning was based on the Commission’s determinations that Judge Roach (1) “used the prestige of his judicial office and exploited his position as a judge to further his private business interests, as well as those of his wife, Laura, in violation of Canons 2B and 4D(1);” and (2) made “public comments regarding the divorce process

and judicial system [that] cast public discredit upon the judiciary”

These determinations are reflected in Charges I, II, and III presented to this court.

- Charge III is not a viable basis for sanctions because the book’s two challenged statements do not cast public discredit upon the judiciary or the administration of justice.
- Charges I and II are viable bases for sanctions.
- The videos admitted into evidence at trial violated Canons 2B and 4D(1). They were accessible on the Divorce in Peace website for about 30 days in 2016 before they were removed. They still were available on YouTube as of the date of trial despite repeated and ongoing efforts to remove them. No evidence definitively establishes how widely these videos have been viewed by persons other than those directly involved in this case; the record suggests viewership was limited.
- The brochure was mailed to 18,000 attorneys, including 12,000 family law attorneys.
- In connection with the Divorce in Peace project, Judge Roach conducted legal research before publication regarding the ethical considerations pertaining to judges who write and publish books.

- None of the marketing efforts included pictures of Judge Roach in his judicial robe. One of the videos showed a picture of a gavel.
- Judge Roach received a letter of inquiry from the Commission in May 2017 referencing complaints that had been made in 2016. He was unaware of any complaints before receiving the letter of inquiry.
- Upon receipt of the letter of inquiry in May 2017, the Divorce in Peace project ceased marketing activities and stopped recruiting new subscribers to the referral service. The Divorce in Peace website became inactive in early 2018 after all prior subscription agreements had expired.
- The *Divorce in Peace* book still is available for purchase.
- No evidence was presented regarding any other complaints about Judge Roach during his service on the bench since 2007. No evidence was presented regarding any misconduct by Judge Roach in the courtroom. No evidence was presented indicating that Judge Roach exploited his position to satisfy his personal desires.
- Judge Roach testified as follows: “I . . . researched and did absolutely the best I could do by trying to help people and trying to write a book to help families. And if the Commission thinks that I somehow messed up, then I’m going to take my punishment But I’m just telling you

that I did not do this for any other reason than to help other people through this process. And if I messed up, then I messed up, and I'll take my medicine.”

Taking all of these circumstances into consideration, we conclude that the appropriate sanction is a public admonition rather than a public warning.

We note that the more severe public sanction imposed by the Commission rested in part on an unwarranted determination that innocuous statements in the *Divorce in Peace* book cast public discredit upon the judiciary.

Turning to the *Deming* factors, the conduct at issue is not an isolated instance. The interconnected Divorce in Peace project — subscription-based referral service, website, and book — was fully operational from spring 2016 until approximately May 2017. During this time, Judge Roach willfully violated Canons 2B and 4D(1) by using the judicial office to promote the financial interests of his wife and himself in ways that went significantly beyond efforts to promote individual book sales; these activities included mailing brochures touting the interrelated Divorce in Peace project to 18,000 attorneys (including 12,000 Texas family law attorneys), along with marketing videos for the project posted on the Divorce in Peace website. Although active marketing efforts ended after May 2017, the website remained active until early 2018. The videos admitted into evidence were accessible on the

Divorce in Peace website for about 30 days in 2016 and thereafter on YouTube. These circumstances support the imposition of a public sanction.

These circumstances are mitigated to a degree by efforts to remove the videos — first from the Divorce in Peace website, and then unsuccessfully from YouTube. The evidence does not indicate that the website and videos were widely viewed. Judge Roach began modifying his conduct upon notification in 2017 of complaints made in 2016. The referral service and website no longer are operative. The evidence indicates that the conduct at issue here was not committed in the courtroom; was not undertaken to satisfy personal desires; and was not undertaken in a coercive, abusive, or denigrating manner. No evidence was proffered of other complaints or problems arising from Judge Roach’s service on the bench since 2007. These mitigating circumstances point to a public admonition as the appropriate sanction.

CONCLUSION

Judge Roach willfully violated Canons 2B and 4D(1) of the Code of Judicial Conduct and article V, section 1-a(6)(A) of the Texas Constitution as alleged in Charges I and II by lending the prestige of his office and exploiting his position as a judge to further the private interests of himself and his wife. The appropriate sanction for this conduct is a public admonition.

We find Judge Roach not guilty insofar as Charge II alleges that he engaged in activities involving him in frequent transactions with persons likely to come before his court. We find Judge Roach not guilty of violating article V, section 1-a(6)(A) of the Texas Constitution as alleged in Charge III.

/s/ William J. Boyce
Justice

Panel consists of Justices Boyce, Longoria, and Chapa.

Publish — Tex. Rules Rem'l/Ret. Judg. 9(e).