



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC Nos. 16-1150-SP AND 18-0608

**PUBLIC ADMONITION
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE KELLY CROSS
PROBATE COURT NO. 1
SAN ANTONIO, BEXAR COUNTY, TEXAS**

During its meeting on April 4-5, 2018, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Kelly Cross, Probate Court No. 1, San Antonio, Bexar County, Texas. Judge Cross was advised of the Commission's concerns and provided written responses. Judge Cross appeared before the Commission on April 4, 2018, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Kelly Cross was the judge for Probate Court No. 1 in San Antonio, Bexar County, Texas.

CJC No. 16-1150-SP

2. The Commission received an anonymous complaint on August 12, 2016, which alleged that Judge Cross referred to a proposed ward ("John Doe"),¹ whose wounds had become infested with maggots, as "Mr. Maggot" or "Maggot Man," or used words to that effect, during a proceeding in his guardianship case.

¹ The Commission refers to the ward anonymously to protect his privacy.

3. Three witnesses provided written statements confirming that they heard Judge Cross refer to Mr. Doe as “Mr. Maggot” or “Maggot Man,” or used words to that effect, as was alleged by the anonymous complaint.
4. In her testimony before the Commission, Judge Cross stated she has no specific recollection of referring to Mr. Doe in this manner, but does not doubt the veracity of the three witnesses. Judge Cross indicated that based on her review of the court’s record in the case and the witnesses’ statements, she likely used this terminology with respect to Mr. Doe more than once.
5. Judge Cross explained that due to her heavy caseload, she is often unable to immediately recall the names of proposed wards and other litigants, and will refer to these individuals by the most distinguishing characteristic of their case. The Judge testified, “Attorneys and other people talk to me about cases every day. They use the proper name, but I can’t remember 4,000 names . . . To differentiate one case from another, I might ask is this the maggot guy, is this the rat lady case . . . The surnames don’t stick.”
6. Judge Cross represented to the Commission that she uses this type of language only when speaking with attorneys and other professionals appearing in her court, and not in front of the person being discussed, and that she is simply trying to identify the correct case.

CJC No. 18-0608

7. On February 6, 2018, the Commission received a complaint from attorney Kathleen “K.T.” Whitehead. Ms. Whitehead provided affidavits from a number of litigants represented by her firm in matters before Judge Cross.

Victoria and Eric Martinez

8. Victoria and Eric Martinez, whose adult daughter was the subject of a guardianship proceeding, provided affidavits to the Commission. They swore that Judge Cross made several comments about their daughter they considered offensive. Specifically, they testified that Judge Cross compared their daughter’s IQ to that of a pen.
9. Judge Cross testified before the Commission that she used a pen as a reference when challenging the medical expert’s IQ assessment of the Martinezes’ daughter. The Judge explained that she viewed the expert’s assessed IQ as far too low, and used the pen as a point of comparison, suggesting that his assessment was more comparable to that of a pen than to the Martinezes’ daughter.
10. Judge Cross testified that her discussion about the IQ of the Martinezes’ daughter was an effort to educate the attorneys about the importance of accurate IQ assessments when seeking a guardianship for an incapacitated person.
11. When Judge Cross was asked the Martinezes’ perception that she had compared their daughter’s IQ to that of a pen, she responded, “I wasn’t speaking to them. I have no idea what they did or didn’t hear. The conversation was not for them.”

Lysa Curry

12. The Commission also received an affidavit from litigant Lysa Curry, who served as the Independent Executor of her father’s estate in *In re the Estate of Luis Ernesto Ramos-Yordan, Deceased* (Case No. 2016-PC-2603). According to Ms. Curry, she and her attorney appeared for a hearing, but the Judge declined to hear the matter on the scheduled date, and required them to

come back to court with additional documents. Ms. Curry described the Judge as “rude and curt” during their interactions, and stated, “It felt that Judge Cross lacked compassion for my family and other families in this process.” Ms. Curry also averred that Judge Cross’ “attitude and demeanor was apathetic to my time, my attorney’s time, and my family’s grief after the lost [sic] of both of my parents.”

13. Judge Cross explained that Ms. Curry had to return to court for three hearings because her attorney repeatedly failed to present all of the documentation necessary to probate the estate. Judge Cross testified, “. . . I will not probate unless you have all of the things you need to have and if someone’s upset with that . . .I’m not responsible for how that attorney interprets that moment or the mood of their client. My job is to make a decision, rule, and go to the next case and in doing so make sure I’ve got the law to back me up.”

Jennifer Jo and Manuel Trevino

14. The Commission also received an affidavit from Jennifer Jo Trevino, who served as the guardian for her adult daughter, as well as one from her husband, Manuel Trevino. Mrs. Trevino stated that when her daughter became disruptive, it appeared as though Judge Cross was “agitated” by her presence at the hearing.
15. Both Mr. and Mrs. Trevino averred that Judge Cross yelled at their attorney, which Mr. Trevino described as stressful both for them and for their daughter, and that the Judge made inappropriate comments that made them uncomfortable. In her affidavit, Mrs. Trevino stated, “Because of [the Judge’s] comments and her negative temperament, I was very stressed at the hearing. I left the hearing and then had to calm [my daughter] down because she too was stressed out over the incident. I was made to feel I did the wrong thing seeking a guardianship to care for my daughter.”
16. With respect to the Trevinos’ allegations, Judge Cross blamed their attorney because she presented incomplete paperwork at the hearing, and overrode the attorney ad litem’s advice that the Trevinos not bring their daughter to the proceeding. Judge Cross testified:

[The ad litem] had told the family ‘don’t bring your daughter.’ She was severely, I think, autistic, and so here’s somebody that really, you know, we’re in a courthouse, we have people with guns, we have deputies, we have all kinds of people around, and when you have somebody who is that incapacitated, they live off of a habit and pattern in their day and the attorney ad litem said no, you don’t have to bring her . . . and they brought her anyway.

Judge Cross denied that she made any inappropriate comments during the hearing, and testified that she does not recall the Trevinos’ daughter being “upset or anything like that.”

17. Judge Cross maintained throughout her appearance that she is the victim of a conspiracy orchestrated by Ms. Whitehead and the Judge’s political opponents to ruin her reputation and hurt her chances for reelection. She suggested Ms. Whitehead influenced her clients’ perception of events, and that many of their issues were the result of incompetence on the part of Ms. Whitehead and her associate attorney.
18. Throughout her testimony, Judge Cross reiterated her deep commitment to the disabled community, both in private practice and now as a judge, and vehemently denied that she has or would ever knowingly disrespect or demean an incapacitated person or anyone else appearing before her in court.

RELEVANT STANDARD

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 an official capacity . . .”

CONCLUSION

The Commission concludes from the facts and evidence presented that Judge Cross failed to treat litigants, lawyers, and others with whom she deals in an official capacity with patience, dignity, and courtesy, in violation of Canon 3B(4) of the Texas Code of Judicial Conduct, when she: (i) referred to a proposed ward as “Mr. Maggot” or “Maggot Man,” or used words to that effect; (ii) challenged the assessed IQ of the daughter of Victoria and Eric Martinez by comparing it to the IQ of a pen; and (iii) interacted with litigants Lysa Curry, Manuel Trevino, and Jennifer Jo Trevino in a manner that reasonably led them feel disrespected, demeaned, and frustrated.

In view of the conduct described above that violated Canon 3B(4) of the Texas Code of Judicial Conduct, it is the Commission’s decision to issue a **PUBLIC ADMONITION AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Kelly Cross, Probate Court No. 1, San Antonio, Bexar County, Texas.

Pursuant to this Order, Judge Cross must obtain **one hour** of instruction with a mentor, in addition to her required judicial education for Fiscal Year 2018. In particular, the Commission desires that Judge Cross receive this additional education in the areas of judicial demeanor and courtroom decorum.

Pursuant to the authority contained in §33.036 of the Texas Government Code, the Commission authorizes the disclosure of certain information relating to this matter to the Texas Center for the Judiciary to the extent necessary to enable that entity to assign the appropriate mentor for Judge Cross.

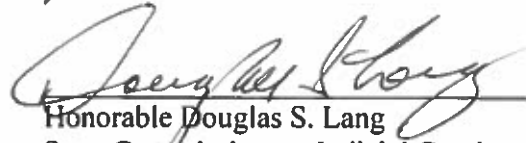
Judge Cross shall complete the additional **one hour** of instruction recited above within **60 days** from the date of written notification from the Commission of the assignment of a mentor. Upon receiving such notice, it is Judge Cross’ responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **one hour** of instruction described herein, Judge Cross shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a (8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION AND ORDER OF ADDITIONAL EDUCATION**.

The Commission has taken this action with the intent of assisting Judge Cross in her continued judicial service, as well as in a continuing effort to protect public confidence in the judicial system and to assist the state’s judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 10th day of April, 2018.



Honorable Douglas S. Lang
State Commission on Judicial Conduct