

Docket No. SCR 23-0002

In Re: § Before the
§
Inquiry Concerning § Special Court of Review,
§
HON. MARY CURNUTT § Appointed by the
CJC No. 21-1592 § Supreme Court of Texas

Examiners' Pre-Trial Memorandum

TO THE HONORABLE MEMBERS OF THE SPECIAL COURT OF REVIEW:

COME NOW the Examiners for the State Commission on Judicial Conduct (the "Examiners") and file their Pre-Trial Memorandum in this matter and would respectfully show as follows.

I. Summary

This case arises from the failures of Respondent, the Honorable Mary Curnutt, to: (1) comply with and maintain professional competence in the law; (2) accord every person who has a legal interest in a proceeding the right to be heard in her handling of default judgments; and (3) timely cooperate with the Commission's investigation into this matter, which constitutes willful and persistent conduct that is clearly inconsistent with the proper performance of her duties.

As a result of Respondent's violations of the Texas Code of Judicial Conduct, the State Commission on Judicial Conduct (the "Commission") sanctioned

Respondent with a Private Warning in CJC No. 21-1592. Examiners respectfully submit that this Special Court of Review should affirm the Commission's sanction for the reasons outlined in this brief and the evidence that will be presented at trial.

A. Judicial Discipline, Generally

The purpose 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. Judicial discipline is not issued for vengeance or retribution, but to inform the respondent judge, the public, and the judiciary that the sanctioned conduct is neither permitted nor condoned and must not be repeated or engaged in by others.

II. Legal Standard of Proceeding

Review by the Special Court of a sanction issued in an informal proceeding, as is the case here, is by trial de novo as that term is used in the appeal of cases from justice to county court.¹ The review is governed to the extent practicable by the rules of law, evidence, and procedure that apply to the trial of a civil action, and the Commission has the burden to prove the charges against a respondent by a preponderance of the evidence.²

¹ See Tex. Gov't Code § 33.034(e)(2).

² See Tex. Gov't Code § 33.034(f); *In re Hecht*, 213 S.W.3d 547, 560 (Tex. Spec. Ct. Rev. 2006).

A judge may be disciplined for a willful violation of the Texas Code of Judicial Conduct or for willful or persistent conduct that is clearly inconsistent with the proper performance of his or her duties or that casts public discredit upon the judiciary or administration of justice.³ Such conduct includes willful violation of a provision of the Texas Code of Judicial Conduct.⁴

“Willful conduct requires a showing of intentional or grossly indifferent misuse of judicial office, involving more than an error of judgment or lack of diligence.”⁵ A judge need not have *specifically* intended to violate the Texas Code of Judicial Conduct 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.⁶

III. Evidence at Trial

The following facts support the charged violations and will be either stipulated to by the parties or shown by a preponderance of the evidence at the Final Hearing. At all times relevant hereto, the Honorable Mary Curnutt served as the Justice of the Peace, Pct. 2, in Arlington, Tarrant County, Texas.

Judge Curnutt presided over *Juan Miguel Torres Mejia vs. Jorge Midence*, Case No. JP02-21-SC00022214 and *Jose Andres Torres Mejia vs. Jorge Midence*,

³ Tex. Const. Art. V, § 1–a(6)(A).

⁴ Tex. Gov’t Code § 33.001(b)(2).

⁵ *In re Slaughter*, 480 S.W.3d 842, 848 (Tex. Spec. Ct. Rev. 2015) citing *Sharp*, 480 S.W.3d at 833; *In re Davis*, 82 S.W.3d 140, 148 (Tex. Spec. Ct. Rev. 2002); *In re Bell*, 894 S.W.2d 119, 126 (Tex. Spec. Ct. Rev. 1995).

⁶ *Slaughter*, 480 S.W.3d at 848; *Sharp*, 480 S.W.3d at 833; *Hecht*, 213 S.W.3d at 560; *Davis*, 82 S.W.3d at 148; *Barr*, 13 S.W.3d at 539.

Case No. JP02-SC00022215 (the “Midence Cases”), two small claims cases in which Jorge Midence (“Midence”) was the Respondent. Midence was served on May 5, 2021, and filed answers on May 10, 2021, in the Midence Cases.

The Midence Cases were scheduled for a pretrial hearing in Judge Curnutt’s Court on August 4, 2021. Midence was not present at the pretrial hearing due to his incarceration at the Tarrant County Jail. Judge Curnutt and her staff were advised Midence would not be present at pretrial and he had timely filed his answers in the Midence Cases. Regardless, Judge Curnutt failed to set the cases for trial and instead issued default judgments against Midence in both cases.

On November 7, 2022, the Commission forwarded to Judge Curnutt a Letter of Inquiry regarding this matter, which was addressed to the mailing address of her court. Judge Curnutt was provided a deadline of November 23, 2022, to respond to the inquiries, but failed to do so. On December 1, 2022, the Commission contacted Judge Curnutt by telephone and offered her an extension of time to respond to the Letter of Inquiry, giving Judge Curnutt until December 9, 2022, to submit her responses.

Judge Curnutt failed to provide her responses before the extended December 9, 2022 deadline, and was non-responsive to the Commission’s subsequent emails and phone calls regarding this matter. On January 20, 2023, 58 days past the original

deadline and 42 days past her extended deadline, the Commission received Judge Curnutt's responses to the Letter of Inquiry.

IV. Applicable Law

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

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

Canon 3B(8) of the Texas Code of Judicial Conduct provides, in relevant part: "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law."

Article V, Section 1-a(6)A of the Texas Constitution provides, in relevant part, that a judge shall not engage in "willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice."

Section 33.001(b)(5) of Texas Government Code provides that a judge's failure to cooperate with the Commission constitutes "willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties," and therefore a violation of Article V, Section 1-a(6)(A) of the Texas Constitution.

Tex. R. Civ. P. 508.3(d) provides, “If a defendant files an answer or otherwise appears in a case before a default judgment is signed by the judge, the judge must not enter a default judgment and the case must be set for trial.”

Tex. R. Civ. P. 508.3(e) provides, “If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly.”

V. Legal Analysis

Rather than set the Midence Cases for trial, Judge Curnutt entered default judgments against Midence at a pretrial hearing in violation of Texas Rules of Civil Procedure 508.3(d) and (e).

During her testimony before the Commission, Judge Curnutt relied on outdated and irrelevant case law to justify her failure to comply with and maintain competence in the law in this regard. Texas Rule of Civil Procedure 508.3 governs default judgments in justice courts. It was adopted by the Texas Supreme Court in Misc. Docket No. 13-9049 and became effective on August 31, 2013. Rule 508.3 was the controlling law during the Midence Cases in 2021, and Judge Curnutt’s rendering of default judgments in this matter was in direct violation of the law, demonstrating her failure to comply with and maintain professional competence in the law, in violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.

Further, Judge Curnutt compounded her misconduct by denying Midence the right to be heard according to law. By failing to set the Midence Cases for trial, Judge Curnutt denied Midence the opportunity to present evidence and arguments in support of his case. Judge Curnutt's actions denied Midence the right to be heard according to law, in violation of Canon 3B(8) of the Texas Code of Judicial Conduct.

Finally, Judge Curnutt's failure to respond in a timely manner to the Commission's inquiries about this matter demonstrates a failure to cooperate with the Commission's investigation into her misconduct and constitutes "willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties," and therefore a violation of Article V, Section 1-a(6)A of the Texas Constitution.

While Examiners acknowledge that Judge Curnutt did eventually provide responses to the Commission's Letter of Inquiry, she failed to meet the Commission's deadlines without explanation, while ignoring communications from the Commission regarding same. Judge Curnutt did not have the discretion to set her own deadline and responding to the Commission at her leisure does not constitute cooperation. The Commission notes that failing to timely respond and comply with deadlines in a civil case could result in a default judgment. By not responding to the Commission in a timely manner, Judge Curnutt held herself to a lower standard than she holds litigants in her courtroom.

VI. Conclusion and Prayer

For the foregoing reasons, Examiners pray the Special Court of Review issue to the Honorable Mary Curnutt a Private Warning for CJC No. 21-1592 and for such other relief to which they may show themselves entitled.

Respectfully Submitted,

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Certificate of Service

Service of this instrument has been made on October 16, 2023, to the Kelly Curnutt, attorney for the Honorable Mary Curnutt, by electronic mail and automated service in accordance with the Texas Rules of Civil Procedure and the Texas Supreme Court's rules for electronic filing and service.

/s/ Erin Morgan
Erin Morgan

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Associated Case Party: Judge Mary Curnutt

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