



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 17-0739-DI

PUBLIC ADMONITION

**HONORABLE CARL GINSBERG
193RD JUDICIAL DISTRICT COURT
DALLAS, DALLAS COUNTY, TEXAS**

During its meeting in Austin, Texas, on December 6-8, 2017, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Carl Ginsberg, Judge of the 193rd Judicial District Court in Dallas, Dallas County, Texas. Judge Ginsberg was advised by letter of the Commission's concerns, provided a written response, and appeared before the Commission to give sworn testimony on the matters raised. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Carl Ginsberg was Judge of the 193rd Judicial District Court in Dallas, Dallas County, Texas.
2. Section 37.004 of the Texas Government Code ("Section 37.004") requires courts to follow a rotating system of appointments for attorneys ad litem, guardians ad litem, mediators, and guardians.¹
3. On August 31, 2015, Judge Ginsberg issued a standing order (the "Standing Order"). The Standing Order advances the argument that Sections 37.003 and 37.004 of the Texas Government Code constitute an improper infringement into the core function of a court by the legislature, and are therefore "manifestly unconstitutional."
4. By its nature, the Standing Order did not resolve any disputed issue of law or fact pending in any case before Judge Ginsberg. As such, the Standing Order has no precedential effect,

¹ Section 37.004 took effect September 1, 2015.

is not subject to traditional means of appellate review, and serves as an advisory opinion regarding Judge Ginsberg's views on the subject.

5. At the time Judge Ginsberg issued the Standing Order, no court of competent jurisdiction had held Section 37.004 unconstitutional.
6. On September 21, 2015, on behalf of Judge Rory Olsen (Presiding Judge of Harris County Probate Court No. 3), the Honorable Harold V. Dutton, Jr., requested an opinion from the Texas Attorney General as to whether Chapter 37 represented an unconstitutional usurpation of the judicial branch's authority.
7. On March 17, 2016, the Attorney General's Office issued opinion KP-0071, which concluded that Chapter 37 is constitutional because appointing attorneys and guardians for litigants is not a core function of the judiciary, and is therefore subject to legislative authority.
8. In his written responses to the Commission, Judge Ginsberg argued that making appointments is a core judicial function, and that **judicial independence is "absolutely critical in safeguarding the rule of law."**
9. He also argued that the Legislature had no authority to usurp the "zone of judicial power" under the guise of establishing administrative rules.
10. In his testimony before the Commission, Judge Ginsberg stated that he has not been complying with Chapter 37, and stated he selects mediators on the basis of merit.
11. Specifically, Judge Ginsberg testified that he selects mediators and mediation groups with whom he has experience on a case-by-case basis based on the facts and circumstances of each case.

RELEVANT STANDARDS AND AUTHORITIES

- I. Chapter 37.004 provides, in its entirety, as follows:
 - (a) Except as provided by Subsections (c) and (d), in each case in which the appointment of an attorney ad litem, guardian ad litem, or guardian is necessary, a court using a rotation system shall appoint the person whose name appears first on the applicable list maintained by the court as required by Section 37.003.
 - (b) In each case in which the appointment of a mediator is necessary because the parties to the case are unable to agree on a mediator, a court using a rotation system shall appoint the person whose name appears first on the mediator list maintained by the court as required under Section 37.003.
 - (c) The court may appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve and who is not included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, or guardian is agreed on by the parties and approved by the court.
 - (d) On finding good cause, the court may appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve on the case and who is not included on the

list, if the appointment of that person as attorney ad litem, guardian ad litem, mediator, or guardian is required on a complex matter because the person:

(1) possesses relevant specialized education, training, certification, skill, language proficiency, or knowledge of the subject matter of the case;

(2) has relevant prior involvement with the parties or case; or

(3) is in a relevant geographic location.

(e) A person who is not appointed in the order in which the person's name appears on the applicable list shall remain next in order on the list.

(f) After a person has been appointed as an attorney ad litem, guardian ad litem, mediator, or guardian from the applicable list, the court shall place that person's name at the end of the list.

2. The doctrine of constitutional avoidance requires the judiciary to presume that laws passed by the legislature are constitutional. The Texas Supreme Court explained the doctrine as far back as 1914 as follows:

"Every presumption is in favor of the validity of an Act of the Legislature, and all doubts are resolved in support of the Act. 'In determining the constitutionality of an Act of the Legislature, courts always presume in the first place that the Act is constitutional. They also presume that the Legislature acted with integrity, and with an honest purpose to keep within the restrictions and limitations laid down by the Constitution. The Legislature is a co-ordinate department of the government, invested with high and responsible duties, and it must be presumed that it has considered and discussed the constitutionality of all measures passed by it.' The unconstitutionality must be clear or the Act will be sustained."

St. Louis S.R. Co. v. Griffin, 171 S.W.703, 704 (Tex. 1914) (citing J.G. Sutherland, & John Lewis, STATUTES AND STATUTORY CONSTRUCTION (1904), Section 82).

3. The Code Construction Act codified this presumption of constitutionality as follows: "In enacting a statute, it is presumed that...compliance with the constitutions of this state and the United States is intended..." Texas Government Code, Section 311.021(a).
4. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part: "A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

CONCLUSION

The Commission concludes from the evidence presented that Judge Ginsberg failed to comply with the law when he failed to comply with Chapter 37 of the Texas Government Code, in violation of Canon 2A of the Texas Code of Judicial Conduct.²

² In accord with Section 311.021 of the Texas Government Code, the Commission presumes that statutes passed by the legislature are constitutional unless determined otherwise by a court of competent jurisdiction. Therefore, the Commission makes no comment or determination regarding the constitutionality of Chapter 37 of the Texas Government Code.

In condemnation of the conduct described above that violated Canon 2A of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable Carl Ginsberg, Judge of the 193rd Judicial District Court in Dallas, Dallas County, Texas.

Pursuant to the authority contained in Article V, Section 1-a(8) of the Texas Constitution, it is ordered that the conduct described above is made the subject of a **PUBLIC ADMONITION** by the State Commission on Judicial Conduct.

The Commission has taken this action 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 15th day of December, 2017.



Honorable Catherine N. Wylie, Vice-Chair³
State Commission on Judicial Conduct

³ Justice Douglas Lang, Chair of the Commission, recused himself from any participation in this matter.