

# Cheap Shot Costs Texas a Gold Star in Ethics

## Why the Texas Criminal Justice System Needs to Clean Out Bad Judges and Prosecutors

**By Charity Crouse\***

When Judge Carmen Kelsey shot attorney Robert S. Bennett, she hit a whole community in Texas. An attorney's disbarment order requires that the attorney contact every client, every legal body with a case, and every accreditation body with whom he is registered. It is a form of shaming that amounts to a professional execution, referred to in the legal sector as the "death penalty" for lawyers.

It is no small thing that Bennett's disbarment occurred in Texas. Texas has the most recorded executions in the nation. Bennett is a lawyer at the forefront of a community supporting exonerated Death Row inmates. He represented Anthony Graves in a grievance filing against former District Attorney Charles Sebesta, who convicted Graves using false evidence. In the course of this representation, a former client, Gary O. Land, sought disciplinary action against Bennett regarding an appeal. Rather than accept the Office of Chief Disciplinary Counsel (OCDC) Commission's recommendation to probate Bennett, Kelsey decided to pick Land's case up, insert her own arguments into the record, and take her shot at the movement behind Bennett when he stood before her in the courtroom.

Kelsey issued her verdict in Spring of 2014.<sup>1</sup> Since then, Bennett's time and substantial resources are focused on appeals to Kelsey's verdict in order to rescind the disbarment and clear his name. But Bennett and these resources are needed in the movement to bring justice to those impacted by prosecutorial misconduct and employed to reform some of the most severe criminal penalty abuses in Texas and elsewhere. More than 1,000 Texas attorneys signed onto an Amicus to support Bennett<sup>2</sup> and 27 others have issued their own independent Amici to provide both character and legal support.<sup>3</sup> Attorneys have spent time on supporting the proceedings and have even undertaken case studies to illustrate the novelty of the process and implicated codes. Graves found another attorney and moved forward with his case; Sebesta was disbarred as a result.<sup>4</sup> Had Kelsey not issued a disbarment, however, then the time and

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<sup>1</sup> "Order of Disbarment," CFLD v. Robert S. Bennett, March 21, 2014.

[http://media.wix.com/ugd/5d38a9\\_e9dcce1a665b4a1bacf44f861b4bafc1.pdf](http://media.wix.com/ugd/5d38a9_e9dcce1a665b4a1bacf44f861b4bafc1.pdf).

<sup>2</sup> "Amicus Curiae for Anne-Mar Aaron, et al.," Robert S. Bennett v. CFLD, July 10, 2014.

<http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=690c69a5-da1c-4e5b-a10a-963d767e9905&coa=coa14&DT=Other&MediaID=21d1b341-a0c9-4c65-a935-4f7aadd37c12>.

<sup>3</sup> OCDC Revealed: The Case: <http://www.ocdc-revealed.com/blank>.

<sup>4</sup> Crimesider staff. "DA disbarred for sending Texas man to death row." CBSnews.com, June 12, 2015.

<http://www.cbsnews.com/news/charles-sebesta-prosecutor-of-wrongfully-convicted-man-anthony-graves-loses-law-license/>.

energy used to clear Bennett could have been invested in the movement to secure redress for Graves and others impacted by blatant disregard for ethical application of the law.

Certainly Bennett's expertise in legal ethics is an invaluable asset. Bennett is a 40-year veteran of ethics instruction and counsel for those dealing with Texas attorney disciplinary proceedings. He spent numerous years providing State Bar of Texas Continuing Legal Education on ethics and was known to offer his services pro bono to mentor young attorneys and provide legal assistance when necessary. He has volunteered for the Justice for Children Foundation in assisting victims of child abuse and has assisted with the Houston Peace Garden to assist with the construction of a park to promote interfaith dialogue. He has additionally travelled four times to Turkey as part of his commitment to building interfaith movements and engaging the Hizmit community in Houston.<sup>5</sup> If anyone is qualified to call out others in the legal profession who violate civil rights, accept false testimony in a capital case, and cover it up for more than a decade, it's Bennett.

The response from the legal community to Bennett's disbarment is illustrative. Attorney Anthony P. Griffin, former civil rights attorney from Galveston and a former client, states that Bennett was a "credit to the profession and the notion that someone who had never had a public or private reprimand being subject to such harsh penalty is 'chilling.'"<sup>6</sup>

Attorney Peter E. Pratt, Jr. has worked in courts throughout Texas for 15 years assisting with the collection and enforcement of debts and has also worked as a collection lawyer for 10 years. In his Amicus brief, he states that the charges and order issued to Bennett were a "fiasco." Additionally, "Amici deeply believe and advocate that a Texas attorney impugned by the Commission with a questionable ethical violation that certainly appears to have no basis in law or in fact ... [and] for retribution now faces the penultimate disciplinary sanction, disbarment."<sup>7</sup>

Former Federal Magistrate and Board Member of the Commission for Lawyer Discipline Judge Dan Naranjo testifies that he worked on cases both with and against Bennett and found him to be an example of "excellence as well as diversity."<sup>8</sup> He also states that Bennett treats clients with both "respect and professionalism." He along with several other distinguished attorneys note the disproportionate punishment and that permitting it sets a precedent for expecting that "in the future lawyers will reject the disciplinary process and the legislature will be forced to take disciplinary matters into their own hands."<sup>9</sup>

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<sup>5</sup> "Bob Bennet Talks on Hizmit Movement."

<http://www.ocdc-revealed.com/bob-bennett-talks-on-hizmet-movement>.

<sup>6</sup> "Brief for Anthony P. Griffin as Amicus Curiae," p. 1, Commission for Lawyer Discipline (CFLD) v. Robert S. Bennett, April 7, 2014. [http://media.wix.com/ugd/5d38a9\\_013da32859ff4504a968183ec931920e.pdf](http://media.wix.com/ugd/5d38a9_013da32859ff4504a968183ec931920e.pdf).

<sup>7</sup> "Brief for Peter E. Pratt as Amicus Curiae," pp. 1-2, CFLD v. Robert S. Bennett, June 4, 2014. [http://media.wix.com/ugd/5d38a9\\_7ef51535d7714ecd9ddbc894f1f29d6f.pdf](http://media.wix.com/ugd/5d38a9_7ef51535d7714ecd9ddbc894f1f29d6f.pdf).

<sup>8</sup> "Letter of Support for Former Judge Dan A. Naranjo," pp. 1-2, CFLD v. Robert S. Bennett, April 8, 2014. [http://media.wix.com/ugd/5d38a9\\_833ddb4c0f0e4c659663d323dba2783a.pdf](http://media.wix.com/ugd/5d38a9_833ddb4c0f0e4c659663d323dba2783a.pdf).

<sup>9</sup> Ibid.

A review of the case itself reveals a series of events that justifiably alarms many of the highest caliber legal minds in the State of Texas. Disbarment is the ultimate penalty for a lawyer -- professionally and personally. Not all state's permit disbarred lawyers to reapply and some that do will not accept lawyers disbarred in other states.<sup>10</sup> Additionally, during the process, an attorney attempting to resume practice is required to prove not only professional compliance but also exceptional personal conduct in a manner that a practicing attorney is not.<sup>11</sup> It also permits procedural dissonance that can potentially jeopardize other cases by establishing the credibility of legal misapplications, as was pointed out by Attorney Lillian Hardwick. Hardwick is a leading ethics attorney and author of numerous articles and a treatise on ethics. She attempts to prove that the legal precedents cited by the court of appeals to substantiate Kelsey's decision should themselves be reconsidered rather than acknowledged to legitimize the order.<sup>12</sup> This case illustrates how judges and prosecutors engage in targeted attacks masquerading as misapplication of laws and codes of conduct as a means of sidelining defenders and advocates just when they are most needed.

### Judge the Judge

Kelsey had no prior experience with disciplinary procedure hearings, much less one with the technical nuances of this one. Prior to being appointed by the Texas Supreme Court to preside over the disciplinary hearing, Kelsey was a Juvenile Court Judge in the 289th District in San Antonio.<sup>13</sup> She refused to listen to eight expert witnesses called to testify on ethics.<sup>14</sup> These witnesses included Don Karotkin, who has defended numerous grievance procedures over the course of 40 years; Peyman Momeni, who had his own cases with the ODCD; Griffin; Former Judge Naranjo and Hardwick.<sup>15</sup>

Several reports emerged before the 2014 Judicial Elections in Kelsey's hometown newspaper, the *San Antonio Express-News*, about complaints from staff, lawyers and former defendants.

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<sup>10</sup> Filisko, G. M. "Disbarred lawyers who seek reinstatement have a rough road to redemption." *American Bar Association Journal*. Aug. 1, 2013, p. 2-3.

[http://www.abajournal.com/magazine/article/disbarred\\_lawyers\\_who\\_seek\\_reinstatement\\_have\\_a\\_rough\\_road\\_to\\_redemption](http://www.abajournal.com/magazine/article/disbarred_lawyers_who_seek_reinstatement_have_a_rough_road_to_redemption).

<sup>11</sup> Ibid, p. 3; Wagnon, Jeffrey D. How to Get Your Texas License Reinstated: Dealing with the ODCD Part One."

<https://www.avvo.com/legal-guides/ugc/how-to-get-your-texas-law-license-reinstated-dealing-with-the-ocdc-part-one>.

<sup>12</sup> Hardwick, Lillian. "The Disbarment and Reinstatement of Bob Bennett: A Case Study of the Texas Disciplinary Rules and Process." online seminar: CLEonline.com. No. 1, 2016.

[http://www.cleonline.com/seminar/seminar\\_detail.php?fSessionId=12782](http://www.cleonline.com/seminar/seminar_detail.php?fSessionId=12782).

<sup>13</sup> *Express-News* Editorial Board. "289th District Court needs a new judge." *San Antonio Express-News*, Sept. 5, 2014.

<http://www.mysanantonio.com/opinion/editorials/article/289th-District-Court-needs-a-new-judge-5734381.php>.

<sup>14</sup> "Reporter's Record, Vol. 3 of 8," pps. 20-21, CFLD v. Robert S. Bennett. March 17, 2014.

[http://media.wix.com/ugd/5d38a9\\_f910f786cf2a4557b1250a01286c54de.pdf](http://media.wix.com/ugd/5d38a9_f910f786cf2a4557b1250a01286c54de.pdf).

<sup>15</sup> "Reporter's Record, Vol. 2 of 8," pps. 23-25, 31-33, CFLD v. Robert S. Bennett, March 17, 2014.

[http://media.wix.com/ugd/5d38a9\\_0a48f9aad49b44e5adb2693aa32302e9.pdf](http://media.wix.com/ugd/5d38a9_0a48f9aad49b44e5adb2693aa32302e9.pdf).

According to one article, “As is often the case with long-tenured incumbents, no one will speak out publicly against the sitting judge because most of the aggrieved parties need to work with the court to earn their livelihood.” She was accused of creating a “hostile atmosphere” and acting in ways that led some lawyers to refuse cases that were on her docket.<sup>16</sup> One judge even permitted a two-year transfer for a lawyer for all court-appointed cases to Kelsey’s courtroom.<sup>17</sup> She was also responsible for half of all recusals filed in the 4th Judicial District in a 14-month period ending in September of 2014.<sup>18</sup>

Other complaints found that Kelsey was one of several judges who ignored the state’s system for assuring equitable assignment of cases. The system, known as the “wheel,” was designed as part of the 2001 Fair Defense Act and required using a rotating list of lawyers in appointments. However, it was alleged that while the average attorney received 25 cases and yielded \$7,500 per year, one attorney, Leland Sebastian, received 379 cases and attorney Cornelius Cox made over \$129,000 per year.<sup>19</sup>

Kelsey additionally presided over the plea deals of at least three juveniles sentenced as adults in murder cases.<sup>20</sup> Texas has had twelve cases wherein juveniles were sentenced as an adult to Death Row and executed.<sup>21</sup> In one 1993 case, 17-year-old Ruben Montoya Cantu was convicted of murder and executed in 2005 only to have his accomplice, who was 15 years old at the time of the crime, recant his testimony and admit that Cantu never committed the crime. This was in addition to finding that an officer involved in the case, Joe De La Luz, had basically set

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<sup>16</sup> Padilla, Gloria. “Kelsey’s court subject of mounting criticism.” *San Antonio Express-News*, Oct. 10, 2014. <http://www.mysanantonio.com/default/article/Kelsey-s-court-subject-of-mounting-criticism-5815292.php>.

<sup>17</sup> *Express-News* Editorial Board. “289th District Court needs a new judge.” *San Antonio Express-News*, Sept. 5, 2014. <http://www.mysanantonio.com/opinion/editorials/article/289th-District-Court-needs-a-new-judge-5734381.php>.

<sup>18</sup> *Ibid.*

<sup>19</sup> Chasnoff, Brian. “Being a favorite of judges pays.” *San Antonio News-Express*, Nov. 6, 2010.

[http://www.mysanantonio.com/news/local\\_news/article/Being-a-favorite-of-judges-pays-801940.php](http://www.mysanantonio.com/news/local_news/article/Being-a-favorite-of-judges-pays-801940.php).

<sup>20</sup> Kapitan, Craig. “Teenager agrees to 20-year sentence.” *San Antonio Express-News*, March 20, 2012.

<http://www.mysanantonio.com/default/article/Teenager-will-be-tried-as-an-adult-in-slaying-4119773.php>;

Casady, Michelle. “Juvenile pleads guilty in bat bludgeoning murder case.” *San Antonio Express-News*, Jan. 14, 2015.

<http://www.mysanantonio.com/news/local/crime/article/Juvenile-who-bludgeoned-guardian-to-death-pleads-6015251.php>;

Moraver, Eva Ruth and Melissa Fletcher Stoeltje. “Teen accused of murder seemed confused.” *San Antonio Express-News*, Sept. 14, 2012.

<http://www.mysanantonio.com/default/article/Teen-accused-of-murder-seemed-confused-3862884.php>;

Fletcher, Joshua. “Capital murder suspect to stand trial as an adult.” *San Antonio Express-News*, Aug. 1, 2013.

<http://www.mysanantonio.com/news/local/article/Capital-murder-suspect-to-stand-trial-as-adult-4698633.php>

.; Casady, Michelle. “Juvenile to serve adult prison time for slaying.” *San Antonio Express-News*, April 24, 2014.

<http://www.mysanantonio.com/news/local/article/Juvenile-to-serve-adult-prison-time-for-slaying-5424518.php>.

<sup>21</sup> “The Execution of Juveniles in the U.S.” *DeathPenaltyInfo.org*.

<http://www.deathpenaltyinfo.org/execution-juveniles-us-and-other-countries>.

Cantu up after being unable to implicate him in another crime. The judge in the case who denied his appeal, Susan Reed, later became Bexar County District Attorney and 22 professors of legal ethics challenged her Conflict of Interest in investigating wrongful executions.<sup>22</sup> These and other cases challenge the integrity of a system which permits prosecutorial misconduct to go unpunished or for other officers of the court to abuse the law and advance. Considering the implications of Bennett's representation of Graves, Kelsey's intentions become even more reproachable.

## Setting the Standard

Kelsey undermined and insulted Bennett from the start of the proceeding. This compelled a law student who was also a witness, Hans Jenssen, to remark that Kelsey "chastised [Bennett] for appearing without counsel even though he informed her that Jeff Wagnon was his co-counsel and was taking the lead."<sup>23</sup> The transcript reveals that Kelsey remarked that Bennett was a "fool" for representing himself and asked of Wagnon once informed of his role, "Is he going to tug your coat when you start being foolish?"<sup>24</sup>

She is revealed to engage in behavior that is entirely inappropriate to her role. She recurrently emphasized her disdain for having to preside over the disciplinary proceeding and spoke of wanting to expedite it in order to leave town.<sup>25</sup> When Bennett attempted to present his case, Kelsey interrupted him to ask if he was "emotional."<sup>26</sup> She also engaged in discussion about the conditions of her hotel arrangements and sought to solicit feedback with one of the witnesses about his.<sup>27</sup>

At various points Kelsey disparages Bennett for telling her "how I should gauge reasonableness"<sup>28</sup> and for being "out of control"<sup>29</sup> in manners that completely dominate the conversation to the point of stymying Bennett's capacity to present his case. A Judicial Complaint on the case reveals that when Bersch mischaracterized the facts of the case and presented errant information on what had transpired, Kelsey allowed it and did not proffer questions when he refused to call any witnesses.<sup>30</sup> Conversely, when Bennett attempted to correct the facts, he

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<sup>22</sup> Robbins, Maro. "Judge refuses to remove DA in Cantu probe." *Houston Chronicle*, June 10, 2006. <http://www.chron.com/news/houston-texas/article/Judge-refuses-to-remove-DA-in-Cantu-probe-1655067.php>.

<sup>23</sup> "Details of Complaint: Formal Complaint to State Commission on Judicial Misconduct," p. 14, Robert S. Bennett v. Judge Carmen Kelsey; May 26, 2016. [http://media.wix.com/ugd/180b0d\\_bcadad0ac2594a41a90ad487d94d5da6.pdf](http://media.wix.com/ugd/180b0d_bcadad0ac2594a41a90ad487d94d5da6.pdf).

<sup>24</sup> "Formal Complaint to State Commission on Judicial Misconduct," p. 7, Robert S. Bennett v. Judge Carmen Kelsey, May 26, 2016. [http://media.wix.com/ugd/180b0d\\_bcadad0ac2594a41a90ad487d94d5da6.pdf](http://media.wix.com/ugd/180b0d_bcadad0ac2594a41a90ad487d94d5da6.pdf).

<sup>25</sup> *Ibid*.

<sup>26</sup> *Ibid*, p. 9

<sup>27</sup> *Ibid*, p. 8.

<sup>28</sup> *Ibid*, p. 40.

<sup>29</sup> *Ibid*, p. 35

<sup>30</sup> *Ibid*, pps. 32-50.

was barraged with provocative questions by the judge until he acceded to her admonishment that he be “straight and concise.”<sup>31</sup> Bennett also attempted during his opening statement to introduce evidence that Land’s attorney was intentionally using the disciplinary process to punish Bennett and was in violation of the rules.<sup>32</sup> Kelsey told him to bring it up later<sup>33</sup> but ended up ending the proceeding questioning the contract’s validity.<sup>34</sup>

Kelsey’s bias for Bersch was so obvious that several witnesses stepped up to document her demeanor. Graves states that he feels “Judge Kelsey had made her mind up at the outset of the trial” and that her “disposition towards the prosecution was extremely different” than the manner in which she engaged Bennett.<sup>35</sup> Graves observes that Kelsey was “out for blood” and that the prosecution did not call one single witness because they “probably saw what I saw and used it to their advantage.”<sup>36</sup> This is affirmed by Former Judge Dan Naranjo, who states the prosecution’s refusal to call witnesses or produce any evidence is “particularly disturbing” and that the grievance process is not to “manipulate the rules, punish haphazardly, or to carry out personal vendettas.”<sup>37</sup>

“Mr. Bersch conducted very little cross-examination of Mr. Bennett’s witnesses and put on no witnesses of his own. To the best of my recollection, neither did Mr. Bersch offer any evidence on the issue of the proper sanction,” said Karotkin. Karotkin is “shocked and dismayed” by the judgement and finds it “clearly erroneous.”<sup>38</sup>

According to law student Gayane Abraham Abrahamyan, most of the objections against Bennett were “sustained, so he had no chance to describe his situation and what he really thought about the accusation brought against him, but Mr. Bersch was allowed to go on as long as he needed.”<sup>39</sup> She notes that Bennett was repeatedly interrupted by Bersch as he spoke while

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<sup>31</sup> Ibid, p. 40.

Reporter’s Record, Vol. 3 of 8,” p. 163, CFLD v. Robert S. Bennett, March 17, 2014.

[http://media.wix.com/ugd/5d38a9\\_f910f786cf2a4557b1250a01286c54de.pdf](http://media.wix.com/ugd/5d38a9_f910f786cf2a4557b1250a01286c54de.pdf).

<sup>32</sup> Reporter’s Record, Vol. 2 of 8,” p. 198-200, CFLD v. Robert S. Bennett, March 17, 2014.

[http://media.wix.com/ugd/5d38a9\\_f910f786cf2a4557b1250a01286c54de.pdf](http://media.wix.com/ugd/5d38a9_f910f786cf2a4557b1250a01286c54de.pdf).

<sup>33</sup> Ibid, p. 200.

<sup>34</sup> Reporter’s Record, Vol. 3 of 8,” p. 160-163, CFLD v. Robert S. Bennett, March 17, 2014.

[http://media.wix.com/ugd/5d38a9\\_f910f786cf2a4557b1250a01286c54de.pdf](http://media.wix.com/ugd/5d38a9_f910f786cf2a4557b1250a01286c54de.pdf). (See further down in article for detail.)

<sup>35</sup> “Letter of Support for Anthony Graves,” p. 2, CFLD v. Robert S. Bennett, April 7, 2014.

[http://media.wix.com/ugd/5d38a9\\_6b7a89e2b87543acacc36588c14a7301.pdf](http://media.wix.com/ugd/5d38a9_6b7a89e2b87543acacc36588c14a7301.pdf).

<sup>36</sup> Ibid.

<sup>37</sup> “Letter of Support for Former Judge Dan A. Naranjo,” p. 2, CFLD v. Robert S. Bennett, April 8, 2014.

[http://media.wix.com/ugd/5d38a9\\_833ddb4c0f0e4c659663d323dba2783a.pdf](http://media.wix.com/ugd/5d38a9_833ddb4c0f0e4c659663d323dba2783a.pdf).

<sup>38</sup> “Letter of Support for Don Karotkin,” p. 2, CFLD v. Robert S. Bennett, April 6, 2014.

[http://media.wix.com/ugd/5d38a9\\_bd317dc65c9c4bd390347e5c90a1aa4d.pdf](http://media.wix.com/ugd/5d38a9_bd317dc65c9c4bd390347e5c90a1aa4d.pdf).

<sup>39</sup> “Letter of Support for Gayane Abraham Abrahamyan,” p. 2, CFLD v. Robert S. Bennett, April 12, 2014.

[http://media.wix.com/ugd/5d38a9\\_77b84b3c2a7d43068823dd5f84b02261.pdf](http://media.wix.com/ugd/5d38a9_77b84b3c2a7d43068823dd5f84b02261.pdf).

Bennett refrained from engaging in such terse actions.<sup>40</sup> On May 26, 2016 a Formal Complaint against Kelsey was filed with the State Commission on Judicial Misconduct.<sup>41</sup>

### Who is the Aggrieved?

The substance of the case in no way warranted such provocation. The grievance case involves a contract for which Bennett required his client seek additional counsel to assure his comprehension before accepting.<sup>42</sup> Land amended and negotiated several aspects of the contract, affirming he understood its implicit and explicit meaning. Land crossed out an entire paragraph in the contract and added in a clause clarifying that Bennett needed to seek his pre-approval for the addition of any task that required more than one attorney's work.<sup>43</sup>

Kelsey's disbarment of Bennett was based on what she determined was Bennett's violation of two Disciplinary Rules. The first, Rule 1.15(d), states:

"Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation."<sup>44</sup>

The 14th Court of Appeals rescinded Kelsey's verdict on Rule 1.15(d) when it said:

"Bennett argues that the evidence is legally and factually insufficient to support the trial court's conclusion that he violated Rule 1.15(d). We sustain Bennett's challenge because there is no evidence that, at the time Bennett's representation of Land was terminated, he failed to refund an advance payment of fees that had not been earned."<sup>45</sup>

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<sup>40</sup> Ibid.

<sup>41</sup> "Formal Complaint to Commission on Judicial Misconduct."

[http://media.wix.com/ugd/180b0d\\_bcadad0ac2594a41a90ad487d94d5da6.pdf](http://media.wix.com/ugd/180b0d_bcadad0ac2594a41a90ad487d94d5da6.pdf).

<sup>42</sup> "Brief for Bill Cornett as Amicus Curiae," p. 8, CFLD v. Robert S. Bennett, May 29, 2015.

<http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=ae2e7a1b-e5d5-4256-9171-5f5d9b9791f6&coa=coa14&DT=Brief&MediaID=f9ee5ad5-5ad7-4ff9-9e5a-1f6dd6382b08>.

<sup>43</sup> "Attorney Retainer and Dispute Resolution Agreement: Bob Bennett and Associates, PC and Gary Land," p. 3, Feb. 10, 2011. [http://media.wix.com/ugd/5d38a9\\_3f9e750d1f604b0094199dd8088092ca.pdf](http://media.wix.com/ugd/5d38a9_3f9e750d1f604b0094199dd8088092ca.pdf).

<sup>44</sup> Texas Code of Ethics for Disciplinary Proceedings, Rule 1.15(d).

<https://www.texasbar.com/AM/Template.cfm?Section=Home&Template=/CM/ContentDisplay.cfm&ContentID=27271>, p. 51.

<sup>45</sup> "Fourteenth Court of Appeals Opinion of CFLD v. Robert S. Bennett."

<http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=81ec4670-ed42-4349-ae7-2f5ce7d15272&coa=coa14&DT=Opinion&MediaID=d17b6df2-673c-46ee-a39c-27744465e17d>, pp. 1-2.

The 14th Court of Appeals did, however, uphold Kelsey's verdict on the second Disciplinary Rule, 3.02, which says:

"In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter."<sup>46</sup>

Kelsey found Bennett in violation of the this rule based on a three-letter suffix -- the inclusion of the word "non-appealable."<sup>47</sup> Because of the use of this word, she ruled his appeal "unreasonably increased the costs or other burdens associated with the case." However, as Pratt points out, "In the real world of judgment collection, and in the absence of insurance, no one ever simply pays a judgment. That's why Amicus works as a post-judgment receiver to collect unpaid judgments. Then there is the matter of this list of legal rights exercised by Bennett as he was entitled to do by law but which Mr. Bersch portrayed as delaying tactics and obstruction of justice."<sup>48</sup>

At this point, Bennett is preparing for the sanctions hearing that the Court of Appeals ordered. Had Kelsey permitted the expert testimony, however, it might well have never even needed to go this far. As Hardwick stated in a letter preparing for the Amended Motion for New Trial, "Never have I seen that the CDC used Rule 3.02 against a lawyer represented by counsel in litigation or Rule 1.15(d) regarding anything other than advanced fees that were unearned (because the lawyer did not complete the task for which the advanced fee was paid) as opposed to a retainer which was exhausted as the lawyer billed against it."<sup>49</sup>

Any doubts about Bennett's transparency are quelled when one views the contract. He includes a separate two-page "Consent to Arbitration Agreement" that Land signed along with the rest of the 13-page contract. Prior to signing the contract with Land, Bennett required Land seek another lawyer to review it with him. Bennett went the extra mile to assure there was an advocate with unbiased expertise to support Land prior to signing.<sup>50</sup> Per Bennett's recommendation, Land consulted Texas Justice of the Ninth Court of Appeals Hollis Horton prior to signing the contract.<sup>51</sup>

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<sup>46</sup> Texas Code of Ethics for Disciplinary Proceedings, Rule 3.02.

<https://www.texasbar.com/AM/Template.cfm?Section=Home&Template=/CM/ContentDisplay.cfm&ContentID=27271>, p. 56.

<sup>47</sup> "Reporter's Record, Vol. 3 of 8," p. 163, CFLD v. Robert S. Bennett, March 17, 2014.

[http://media.wix.com/ugd/5d38a9\\_f910f786cf2a4557b1250a01286c54de.pdf](http://media.wix.com/ugd/5d38a9_f910f786cf2a4557b1250a01286c54de.pdf).

<sup>48</sup> "Brief for Peter E. Pratt as Amicus Curiae," pps. 15-16, CFLD v. Robert S. Bennett, Sept. 8, 2015.

<http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=4da6eb77-51ee-43b5-9720-ed893b1b1115&coa=coa14&DT=Brief&MediaID=9d95bef5-01aa-4284-b833-29a2f6f4aab9>.

<sup>49</sup> "Lillian Hardwick letter in preparation for Amended Motion for a New Trial";

[http://media.wix.com/ugd/5d38a9\\_7e5aa7d732f0499083bdb3793266bb2c.pdf](http://media.wix.com/ugd/5d38a9_7e5aa7d732f0499083bdb3793266bb2c.pdf), p. 2.

<sup>50</sup> "Brief for Bill Cornett as Amicus Curiae," p. 8, CFLD v. Robert S. Bennett, May 29, 2015.

<http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=ae2e7a1b-e5d5-4256-9171-5f5d9b9791f6&coa=coa14&DT=Brief&MediaID=f9ee5ad5-5ad7-4ff9-9e5a-1f6dd6382b08>.

<sup>51</sup> *Ibid*, p. 9.



Instead of recognizing this, Kelsey referred to aspects of nonrelevant contract and fiduciary law in a disciplinary procedure hearing, implicitly injecting a perspective on the validity of the contract itself.<sup>52</sup> At the same time she refused to accept expert testimony from any of Bennett's witnesses, including Hardwick, after Bersch's objection.<sup>53</sup> Naranjo was only permitted to offer testimony she deemed specific to the facts of the case.<sup>54</sup> This certainly shows that she understood the impact that her comments would have by being on the record. She also knew the capacity she had to impugn Bennett's character in representing Land, thus potentially challenging the validity of this and other client relations in which he engaged.<sup>55</sup>

Kelsey acknowledged one of Bersch's original requests that Bennett be sentenced to six hours of CLE instruction in ethics.<sup>56</sup> Bennett has been a CLE instructor on ethics issues for decades; the top ethics experts in the State of Texas showed up to testify that he has committed no ethics violations. For Kelsey to refuse to hear the testimony of these experts and to then apply a penalty as severe as disbarment in Bennett's case is to repudiate the integrity and legitimacy of the disciplinary procedures and those committed to upholding legal ethics.

## Structural Adjustments

That a judge can get away with such an abuse of power should really sound alarms, as it did. Over 150 legal professionals wrote letters of support for Bennett on their observations of Kelsey's misconduct.<sup>57</sup> "The notion that a lawyer can be disciplined and no less disbarred for his legally granted rights is frightening at best," said Griffin. "There are times when the system is required to make self-adjustments when an injustice becomes glaring and an insult to the process -- it is my belief that the facts in Mr. Bennett's case represents one of those times when a self-adjustment should occur."<sup>58</sup>

Attention also needs to be paid to the timing of these charges and how they impacted Bennett's ability to continue his support of community and movement building aimed at securing justice. Intended misapplication of law intended to stifle dissent or prevent the pursuit of justice regarding human and civil rights violations must be stopped. It is also necessary to support

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<sup>52</sup> "Formal Complaint to State Commission on Judicial Misconduct," pp. 38-40, 44-46, Robert S. Bennett v. Judge Carmen Kelsey, May 26, 2016; "Brief for Peter E. Pratt as Amicus Curiae," p. 11, CFLD v. Robert S. Bennett. June 4, 2014. [http://media.wix.com/ugd/180b0d\\_bcadad0ac2594a41a90ad487d94d5da6.pdf](http://media.wix.com/ugd/180b0d_bcadad0ac2594a41a90ad487d94d5da6.pdf).; "Reporter's Record, Vol. 3 of 8," pps. 22-24, CFLD v. Robert S. Bennett. March 17, 2014. [http://media.wix.com/ugd/5d38a9\\_f910f786cf2a4557b1250a01286c54de.pdf](http://media.wix.com/ugd/5d38a9_f910f786cf2a4557b1250a01286c54de.pdf).

<sup>53</sup> Ibid, pps. 116-120.

<sup>54</sup> Ibid, pps. 12-18, 20-22, 65-74.

<sup>55</sup> Ibid, p. 160-162.

<sup>56</sup> Ibid, pps. 19-20.

<sup>57</sup> See website [ocdc-revealed.com](http://www.ocdc-revealed.com/letters) for copies of letters: <http://www.ocdc-revealed.com/letters>.

<sup>58</sup> "Letter of Support for Anthony P. Griffin," pp. 1-2, CFLD v. Robert S. Bennett, April 7, 2014. [http://media.wix.com/ugd/5d38a9\\_013da32859ff4504a968183ec931920e.pdf](http://media.wix.com/ugd/5d38a9_013da32859ff4504a968183ec931920e.pdf).

lawyers and other legal advocates who are wrongfully incriminated and expose the underlying methods of attacks against them. We need also to expose and boycott those who stand to benefit from these attacks. This is the best defense to prevent those targeted from being eliminated or for others who are similarly gifted to be intimidated out of participation.

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