



**BEFORE THE  
STATE COMMISSION ON JUDICIAL CONDUCT**

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**CJC Nos. 01-0175-DI AND 01-0187-DI**

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**PUBLIC WARNING**

**HONORABLE DON EMERSON  
320<sup>TH</sup> JUDICIAL DISTRICT COURT  
AMARILLO, POTTER COUNTY, TEXAS**

During its meeting in Austin, Texas, on May 9-10, 2002, the State Commission on Judicial Conduct (the Commission) concluded a review of allegations against the Honorable Don Emerson, Judge of the 320<sup>th</sup> Judicial District Court, Amarillo, Potter County, Texas. Judge Emerson was advised by letter of the Commission's concerns and appeared before the Commission on April 12, 2002 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 Don Emerson was judge of the 320<sup>th</sup> Judicial District Court, Amarillo, Potter County, Texas.

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2. In 1999 and 2000, an average of thirty-eight (38) attorneys received court appointments from Judge Emerson. A majority of these appointments were made in criminal cases.
3. Three (3) attorneys, Paul Herrmann ("Herrmann"), Laura Hamilton ("Hamilton") and Walt Weaver ("Weaver"), received more than forty-five (45%) percent of all criminal court appointments from Judge Emerson during this period.

4. Herrmann, Hamilton and Weaver had previously worked together as prosecutors with the Potter County District Attorney's office. During 1999 and 2000, the three lawyers officed together while in private practice.
5. Prior to leaving the district attorney's office on or about August 24, 1998, Herrmann had been the lead prosecutor assigned to Judge Emerson's court.
6. While a prosecutor in Judge Emerson's court, Herrmann worked on a high-profile capital murder case styled, *State of Texas v. John Lezell Balentine*. Balentine had been charged with, then later indicted for, a triple homicide that occurred in Amarillo on or about January 21, 1998.
7. On or about August 3, 1998, approximately three weeks before Herrmann left the district attorney's office, he and the District Attorney represented the state before Judge Emerson at Balentine's arraignment.
8. On or about August 25, 1998, the day after Herrmann left the district attorney's office, Herrmann was appointed by Judge Emerson to represent Balentine in the capital murder case.
9. Judge Emerson testified before the Commission that he gave Herrmann the appointment in an effort to assist the lawyer as he began his private practice.
10. As a result of this appointment, the state was required to pursue a motion to disqualify Herrmann because of the conflict of interest created by his prior involvement in the case as a prosecutor.
11. In 1999, Herrmann announced that he was a candidate for the office of Potter County Attorney and actively campaigned for that office until his defeat in November 2000.
12. During his 1999-2000 political campaign, Herrmann received 289 court appointments from Judge Emerson for a total of \$118,900 in fees.
13. During this same period, Herrmann's associates, Hamilton and Weaver, together received 334 appointments for a total of \$142,199 in fees.
14. Other attorneys who received appointments from Judge Emerson during this period received no more than 33 appointments for a total of \$18,250 in fees.
15. Witnesses informed Commission staff that Judge Emerson was not fair in his appointments and favored Herrmann in particular with a disproportionate number of appointments out of his court.
16. Since January 2002, Potter County has implemented a rotating system of appointments in criminal cases.

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17. Judge Emerson has been the local administrative district judge in Potter County for approximately 7 years.
18. On or about November 3, 1998, Pamela Sirmon was elected judge of Potter County Court at Law No. 2, defeating the incumbent, Richard Dambold, who had held that bench for more than 20 years.
19. Pursuant to §25.1902 of the Texas Government Code, Potter County Court at Law No. 2 has concurrent jurisdiction with the district court to hear family law cases and proceedings.
20. Prior to November 3, 1998, family law cases in Potter County were allocated as follows: Seventy-Five (75%) percent were filed in the 320<sup>th</sup> District Court; Twenty (20%) percent were filed in County Court at Law No. 2.; Five (5%) percent were filed in the 108<sup>th</sup> District Court.
21. On November 4, 1998, the day after Pamela Sirmon defeated Judge Dambold in the general election, Judge Emerson directed the Potter County District Clerk to discontinue filing family law cases in County Court at Law No. 2. Judge Emerson later directed the District Clerk to discontinue filing juvenile cases in County Court at Law No. 2.
22. Prior to this time, decisions regarding the assignment of cases had been made by the Potter County Council of Judges.
23. Under this new directive, the allocation of family law cases in Potter County was as follows: Ninety-Five (95%) percent would be filed in the 320<sup>th</sup> District Court; Five (5%) percent would be filed in the 108<sup>th</sup> District Court.
24. On November 10, 1998, Judge Emerson directed the District Clerk to file all family law cases in the 320<sup>th</sup> District Court, with the exception of those cases filed by his wife, Sally Emerson, a local family law practitioner, whose cases would be filed in the 108<sup>th</sup> District Court.
25. Judge Emerson indicated that the decision to remove the family law cases from County Court at Law No. 2. was intended to ensure that requests for temporary restraining orders and temporary hearings filed in conjunction with most family law matters would be timely heard. Judge Emerson stated that he had the time to handle the additional casework until Judge Sirmon became qualified.
26. Upon assuming the bench after January 1, 1999, Judge Sirmon met with Judge Emerson to discuss his decision to remove the family law and juvenile cases from her court.

27. Although she objected to Judge Emerson's opinion that she was not yet qualified to hear these cases (she had been practicing family law in Judge Emerson's court for more than six years before becoming a judge), Judge Sirmon accepted Judge Emerson's decision believing that this was a temporary arrangement intended to assist her in adjusting to the new position.
28. In June 1999, Judge Sirmon approached Judge Emerson in an effort to convince him that she should start receiving her court's share of family law and juvenile cases again. Without explanation, Judge Emerson denied Judge Sirmon's request to start receiving new family law and juvenile case filings.
29. When Judge Emerson refused to alter the assignment of cases, Judge Sirmon went directly to the District Clerk with a request that 20% of new family law and juvenile cases be filed in her court.
30. Judge Sirmon also requested that the decision of case assignments be made by the Council of Judges, rather than by Judge Emerson.
31. On July 12, 1999, the Council of Judges voted to have all family law cases filed in the 320<sup>th</sup> District Court and all juvenile cases filed in County Court at Law No. 1.
32. The allocation of cases has not changed since that time.

### **RELEVANT STANDARDS**

1. Canon 2B of the Texas Code of Judicial Conduct states that "[a] judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others."
2. Canon 3C(4) of the Texas Code of Judicial Conduct states, in relevant part, that "[a] judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism."

### **CONCLUSIONS**

The Commission concludes from the evidence presented that, based on the disproportionate number of appointments made, and fees paid, to Herrmann and his associates, Hamilton and Weaver, especially between 1999 and 2000, the period when Herrmann was running for public office, Judge Emerson exhibited favoritism and partiality in the appointments made out of his court in violation of Canon 3C(4) of the Texas Code of Judicial Conduct. In reaching this conclusion, the Commission acknowledges that neither the number of appointments made, nor the amount of fees paid, to any one particular attorney is, in and of itself, evidence of favoritism by a judge. However, taking into account the totality of the circumstances, the Commission concludes in this case that the method of selection used by Judge Emerson, in conjunction

with the inordinate number of appointments and fees paid to one particular attorney, evidences such bias and favoritism. By favoring Herrmann with so many appointments, including Herrmann's controversial appointment in the Balentine capital murder case, Judge Emerson used his position as judge to advance the private interests of Herrmann in violation of Canon 2B of the Texas Code of Judicial Conduct.

The Commission further concludes from the evidence presented that Judge Emerson's decision to initially remove all new family law and juvenile cases from the jurisdiction of County Court at Law No. 2, without following the prior established practice of the Potter County Council of Judges, resulted in an appearance that the judge was using his position and authority to advance his own private interests or the private interests of others in violation of Canon 2B of the Texas Code of Judicial Conduct. It also appears to the Commission that the judge used the prestige of his position as local administrative judge to effectively manipulate the system in order to afford certain litigants a more favorable forum for their cases in violation of Canon 2B of the Texas Code of Judicial Conduct.

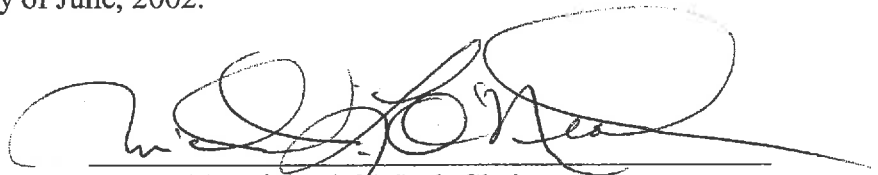
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In condemnation of the above-recited conduct that violated Canons 2B and 3C(4) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC WARNING** to the Honorable Don Emerson, Judge of the 320<sup>th</sup> Judicial District Court, Amarillo, Potter County, Texas.

Pursuant to the authority contained in Article 5, Section 1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC WARNING** by the Commission.

The Commission takes 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 the 28 day of June, 2002.



Honorable Michael O'Neal, Chair  
State Commission on Judicial Conduct