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July 9, 2018

State Commission on Judicial Conduct
P.O. Box 12265
Austin, Texas 78711
Fax: (512) 463-0511

Via facsimile and first-class mail

Re: Judge Kyle Hawthorne, 85th District Court of Brazos County, Texas

To Whom It May Concern:

On June 26, 2018, I learned that Judge Kyle Hawthorne is still using an email account hosted by his former law firm, and apparently he uses the address for judicial business. I have enclosed a letter to Judge Hawthorne wherein I am seeking emails to and from that address pursuant to Rule 12 of the Texas Rules of Judicial Administration.

Judge Hawthorne should have cut ties to his former law firm when he assumed judicial office, and his continued use of the firm email address creates at least some appearance of impropriety. Surrounding circumstances, however, create a significant appearance of impropriety. Judge Hawthorne has earned a reputation for favoritism toward attorney Jay Goss, his former law partner, and I have witnessed some of that favoritism firsthand.

In 2015, I began representing attorney Bill Youngkin of Bryan as a defendant in a matter pending before Judge Hawthorne, while Mr. Goss represented the plaintiff. Prior to my appearance, Mr. Youngkin had been representing the other defendants in that case. In a transparent attempt to stave off summary judgment against his client, Mr. Goss filed a last-day amendment to his client's petition that named Mr. Youngkin as a defendant, and Mr. Goss simultaneously moved to disqualify Mr. Youngkin from the case. I filed a motion to dismiss the facially frivolous claims and to sanction the plaintiff for filing it, but Judge Hawthorne denied the motion. On April 27, 2018, the Texas Supreme Court unanimously reversed Judge Hawthorne in *Youngkin v. Hines*, 546 S.W.3d 675, and it remanded the case to Judge Hawthorne for a determination of attorney fees and mandatory sanctions.

At a June 28, 2018 hearing before Judge Hawthorne regarding fees and sanctions, Mr. Goss correctly argued that attorney fees had to be determined according to the evidence that I had already presented prior to the interlocutory appeal. According to that undisputed evidence, my client was entitled to \$17,290 in attorney fees. Mr. Goss nonetheless argued that I should only be awarded attorney fees attributable to trial court

proceedings, *i.e.*, \$8,290.80. Thus my opposing counsel conceded that my client was owed *at least* \$8,290.80 in attorney fees.

Notwithstanding that, Judge Hawthorne awarded only \$5,880.00 in attorney fees in a letter order dated July 6, 2018, *i.e.*, he awarded \$2,410.80 less than the lowball amount that even Mr. Goss conceded was due. He also awarded a paltry \$250 in sanctions.

Judge Hawthorne may have acted within his discretion in setting the sanctions amount, and the fee determination may be nothing more than appealable error, but those events do not occur in isolation. When combined with the fact that Judge Hawthorne is still using an email address hosted by Mr. Goss's firm, I have to wonder whether Judge Hawthorne is still getting some financial benefit from that firm, and whether he and Mr. Goss are communicating *ex parte* via firm emails. I should not have to wonder about that, and neither should my client. I can provide additional examples of Judge Hawthorne's favoritism if you wish.

I regretfully allege that Judge Hawthorne violated Canons 2(A), 2(B), and 3(B)(5) of the Texas Code of Judicial Conduct. I will supplement this complaint if I find evidence of additional misconduct in the emails that I have requested from Judge Hawthorne.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger

cc: The Hon. Kyle Hawthorne, Judge
85th District Court of Brazos County