IN THE 85th DISTRICT COURT
BRAZOS COUNTY, TEXAS

BILLY G. HINES, JR., **Plaintiff,** **vs.** **BUETTA SCOTT, RAJENA SCOTT, CURTIS CAPPS, and BILL YOUNGKIN,** **Defendants**	**Cause No. 13-002356-CV-85**

MOTION FOR RECUSAL

NOW COME the Defendants, moving The Hon. Judge Kyle Hawthorne to recuse himself from this case pursuant to Texas R. Civ. P. 18a:

Background

On July 9, 2018, Defendants' Counsel filed a judicial misconduct complaint against Judge Hawthorne.[1] A true and correct copy of that complaint is attached as Exhibit 1 and incorporated herein by reference. Later that day, Defendants' Counsel published a blog post regarding Judge Hawthorne's pattern of favoritism toward his former law firm and toward one of his former partners in particular, namely Jay Goss; that post further discussed the fact that Judge Hawthorne appeared to be using an email address hosted by his former law firm. A true and correct copy of that blog post is attached as Exhibit 2 and incorporated herein by reference. The day after the judicial misconduct complaint was filed, Mr. Goss submitted a rebuttal to the State Commission on Judicial Conduct. Mr. Goss thus appears to be serving as an advocate for Judge Hawthorne

1 As witnessed by his signature below, the undersigned declares under penalty of perjury under the laws of the State of Texas that the factual statements in this document are true and correct. Unless otherwise specified, the factual statements herein are based on the personal knowledge of the undersigned.

before the commission, even if he is not formally representing Judge Hawthorne in that matter. A true and correct copy of Mr. Goss's rebuttal is attached as Exhibit 3.

In that rebuttal, Mr. Goss stated that Judge Hawthorne was denied access to khawthorne@bruchez.com when he assumed judicial office. The Defendants, however, only learned about that email address because Mr. Goss's, co-counsel, Karl Hoppess, cc'd that address in a June 26, 2018 email to Judge Hawthorne's assistant regarding this case. A true and correct copy of that email is attached as Exhibit 4. The undersigned subsequently emailed khawthorne@bruchez.com three times, and none of the emails bounced back. If Judge Hawthorne no longer had access to that email account, one must wonder why Mr. Goss's co-counsel was sending an email to that address.

Since filing the judicial misconduct complaint, the undersigned has been made aware of other matters that necessitate Judge Hawthorne's recusal, particularly his involvement in *Gregg Falcone v. The Known and Unknown Heirs of Joshua Washington, Sr.*, Cause No. 16-000649-CV-85, wherein Mr. Goss represented parties adverse to one of the Defendants in this case. According to the pleadings and evidence in *Falcone*, the plaintiffs / counter-defendants attempted to defraud various owners of their interests in two 50-acre tracts south of College Station, namely by filing deeds that purport to transfer real estate that they did not own to third parties. The deeds used in furtherance of that unlawful scheme were prepared by Bruchez, Goss, Thornton, Meronoff & Hawthorne, P.C.[2] *while Judge Hawthorne was still a partner in the law firm*, yet he continues to preside over *Falcone* anyway. Furthermore, Judge Hawthorne appointed Mr. Goss's girlfriend, Jana Beddingfield, to serve as attorney ad litem in that case notwithstanding an egregious conflict of interest. A true and correct copy of the order appointing

2 Now known as "Bruchez, Goss, Thornton, Meronoff & Briers, P.C." and hereinafter referred to as "The Firm."

Ms. Beddingfield is attached as Exhibit 5. Strangely, that document does not appear in the clerk's records. The romantic relationship between Mr. Goss and Ms. Beddingfield was widely known in the legal community, and Mr. Goss and Judge Hawthorne are personal friends, thus it is nearly impossible to believe that Judge Hawthorne was unaware of the relationship when he made the appointment. To Mr. Goss's credit, he raised the conflict and another ad litem was appointed, but one most wonder if he did that only to protect his girlfriend.

Argument

A judge must be recused when his "impartiality might reasonably be questioned" or he has a "personal bias or prejudice concerning the subject matter or a party." Tex. R. Civ. P. 18b(b) (1) and (2), respectively. The complaining party "must show that a reasonable person, with knowledge of the circumstances, would harbor doubts as to the impartiality of the trial judge, and that the bias is of such a nature and extent that allowing the judge to serve would deny the movant's right to receive due process of law." *In re Commitment of Winkle*, 434 S.W.3d 300, 311 (Tex.App.–Beaumont 2014, pet. denied).

> The inquiry is an objective one. The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is "likely" to be neutral, or whether there is an unconstitutional "potential for bias."

Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 881, 129 S. Ct. 2252, 2262, 173 L. Ed. 2d 1208 (2009).

> Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975); *see Williams v. Pennsylvania*, 579 U.S. ——, ——, 136 S.Ct. 1899, 1905, 195 L.Ed.2d 132 (2016) ("The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias" (internal quotation marks omitted)).

Rippo v. Baker, 137 S. Ct. 905, 907, 197 L. Ed. 2d 167 (2017).

In this case, Judge Hawthorne has created a strong appearance of impropriety, namely a strong appearance of favoritism toward his former law firm and Mr. Goss. As noted above, Judge Hawthorne is still presiding over *Falcone* notwithstanding a serious conflict of interest. The issue in *Falcone* is not merely recusal but disqualification, and the difference is significant.

> Judicial recusal is a non-jurisdictional issue that requires either a proper recusal motion or an assertion that the case has been assigned to another court to avoid waiver. *See Buckholts Indep. Sch. Dist. v. Glaser*, 632 S.W.2d 146, 148 (Tex.1982); McElwee v. McElwee, 911 S.W.2d 182, 185–86 (Tex.App.-Houston [1st Dist.] 1995, writ denied) (noting that ability to recuse judge can be waived). By contrast, judicial disqualification is a jurisdictional issue, and any judgment rendered by a constitutionally disqualified judge is void. *See In re Wilhite*, 298 S.W.3d 754, 757 (Tex.App.-Houston [1st Dist.] 2009, orig. proceeding) (noting differences between recusal and disqualification); *Gulf Mar. Warehouse Co. v. Towers*, 858 S.W.2d 556 (Tex.App.-Beaumont 1993, writ denied) (explaining further distinction between recusal and disqualification).

Davis v. West, 433 S.W.3d 101, 106–07 (Tex. App. – Houston [1st Dist.] 2014, pet. denied). In *Falcone*, some of the parties and counsel overlap with this case, and the dispute centers around the fraudulent deeds prepared by The Firm *while Judge Hawthorne was still a partner.* According to Tex. R. Civ. P. 18b(a)(1), a judge "must" disqualify himself when "the judge has served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter..." Since the fraudulent deeds were prepared by The Firm while Judge Hawthorne was a partner, he should have disqualified himself *on his own initiative* as soon as the dispute arose. Instead, it appears that Judge Hawthorne may have retained control of the case in order to protect the fraudulent scheme. Among other things, Judge Hawthorne allowed his former partner, Mr. Goss, to serve various defendants by publication rather than serving them personally, even though some of the defendants could have been served personally. Mr. Goss published notice only once, contrary to the rules for service by citation, thereby decreasing the likelihood that the defendants would learn about the scheme to defraud them of their property. When Mr. Capps moved the Court to

compel Mr. Goss to properly serve the other defendants, Judge Hawthorne inexplicably denied the motion (although Mr. Goss did conduct another publication notice as required by the rules).[3]

If Judge Hawthorne was unaware of the real estate fraud (or The Firm's role in it) while he was a partner, he certainly learned about the fraud after *Falcone* was filed in his Court. He not only failed to disqualify himself from that case, it appears that he has presided over it with the intent of protecting Mr. Goss' clients. Finally, Judge Hawthorne should have known better than to preside over *Falcone*. He is mentioned by name in *In re O'Connor*, 92 S.W.3d 446 (2002), wherein the Texas Supreme Court disqualified Judge Randy Michel because he and Kyle Hawthorne were law partners during part of the time that Mr. Hawthorne had been representing Ms. O'Connor.

In the present case, Judge Hawthorne repeatedly bent himself over backwards to favor the interests of Mr. Goss's client. In addition to the instances noted in the judicial misconduct complaint, Judge Hawthorne refused to set a hearing on a motion for summary judgment that was originally set for a hearing *more than three years ago*, and only because Mr. Goss asked him not to hear it. Making matters worse, Mr. Goss is now advocating on Judge Hawthorne's behalf before the State Commission on Judicial Conduct. It thus appears that Mr. Goss is trying to protect his "insider" status in Judge Hawthorne's courtroom.

Enough is enough. Judge Hawthorne should be recused from this case immediately, and he should recuse himself from all other cases involving his former law firm or law partners.

3 Mr. Goss is no longer representing any of the parties in *Falcone*.

Respectfully submitted,

/s/ Ty Clevenger

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Brooklyn, New York 11217
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tyclevenger@yahoo.com

Attorney for Defendants

CERTIFICATE OF SERVICE

I certify that on July 16, 2018 a copy of the foregoing document was provided to Karl C. Hoppess and Jay Goss below via email per the contact information below:

KARL C. HOPPESS
8200Wednesbury, Suite 420
Houston, Texas 77074
Fax: (713) 651-1620
kchoppess@swbell.net

JAY GOSS
4343 Carter Creek Parkway, Suite 100
Bryan, Texas 77802
Fax: (979) 268-5323
jgoss@bruchez.com

/s/ Ty Clevenger
Ty Clevenger

Exhibit 1

TY CLEVENGER
P.O. Box 20753
Brooklyn, New York 11202

telephone: 979.985.5289
facsimile: 979.530.9523
tyclevenger@yahoo.com
Texas Bar No. 24034380

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,

Ty Clevenger

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

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July 9, 2018

The Hon. Kyle Hawthorne, Judge
85th District Court
Brazos County Courthouse
300 E. 26th Street
Bryan, Texas 77803

Via email attachment and facsimile

Re: Request for Judicial Records

Judge Hawthorne:

As permitted by Rule 12 of the Texas Rules of Judicial Administration, I request the opportunity to view the following records:

(1) All emails (including attachments) sent from or received by *khawthorne@bruchez.com* (or any other email account at bruchez.com that is under your control) since you took office as 85th District Judge.

(2) All private communications (including attachments) that you have exchanged with Karl Hoppess, Jay Goss and/or any partner or employee of Bruchez, Goss, Thornton, Meronoff & Briers, P.C. regarding any court matter since you took office as 85th District Judge. The term "private communications" includes emails, texts, or other electronic messaging, *i.e.*, communications other than those sent through official channels such as electronic filing or your official government email address.

(3) Documents reflecting any other private email accounts that you have used to conduct court business, as well as any emails to or from those accounts that pertains to court business. The term "private email accounts" includes any email account other than your official government email address. The term "court business" includes communications about any matter pending in your court.

By copy of this letter to the partners at Bruchez, Goss, Thornton, Meronoff & Briers, P.C., I demand the preservation of all emails sent to or from *khawthorne@bruchez.com* or any other account belonging to Judge Hawthorne since he took office as 85th District Judge. I further demand the preservation of any hardware (*e.g.*, computer server) storing any of the foregoing information, as I expect this evidence will be relevant to forthcoming litigation against your firm.

If possible, I prefer to receive the foregoing information in electronic form. For the record, I am sending this letter entirely on my own initiative. Neither Bill Youngkin nor anyone else knew that I would be sending it.

Thank you in advance for your attention to these matters.

Sincerely,

Ty Clevenger

cc: Mr. Jay B. Goss
Mr. Karl Hoppess
Mr. Ernest V. Bruchez
Mr. William S. Thornton, Jr.
Ms. Patricia E. Meronoff
Mr. Joseph N. Briers

Exhibit 2

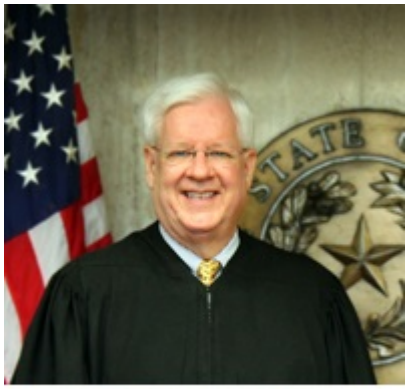
LawFlog
Because some people just need a good flogging

A case study in good-old-boy judicial corruption

July 9, 2018 by Ty Clevenger

Buckle up, kids. It's time to air some dirty laundry.

First, a little background: As a practicing lawyer, I've had to keep my mouth shut about a lot of things. Some of it is pretty straightforward, *e.g.*, privileged communications from my client. Other things are much murkier, *e.g.*, deciding when to speak up about the petty corruption and political favoritism that I routinely witness in the courtroom.



Judge Steve Smith
361st District Court

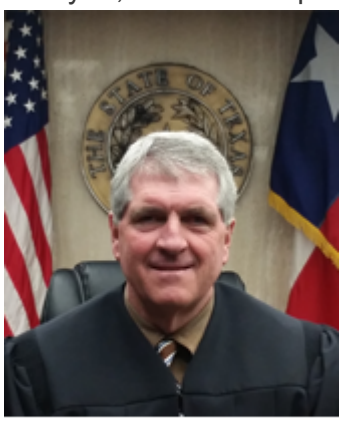
If you follow this blog, you might assume that I automatically blow the whistle every time I see judicial chicanery, but I don't. I learned years ago (and the hard way) that judges are often quick to retaliate. When I speak up, there is a strong chance that one of my clients will suffer for it. I once criticized U.S. District Judge Vanessa Gilmore in Houston for some grossly inappropriate comments that she made in the courtroom, and 361st District Judge Steve Smith decided to avenge her by retaliating against one of my clients in a totally unrelated case in Bryan. The judiciary is a fraternity, after all, and they protect their own.

On the other hand, there comes a point when playing nice is no longer good enough, because the frat boys just keep hurting your clients in order to help their friends. I reached my boiling

point last week, so today I'm going to air some dirty laundry that I've been sitting on for years.

PLAYING FAVORITES

This morning I filed a judicial misconduct complaint against 85th District Judge Kyle Hawthorne of Bryan, and the complaint is a case study in the sort of petty corruption and political favoritism that I routinely encounter in Texas courts. In this excursion, we'll go all the way to the Texas Supreme Court and back, and yours truly will LawFlog various deserving judges and lawyers along the way.



Judge Kyle Hawthorne
85th District Court

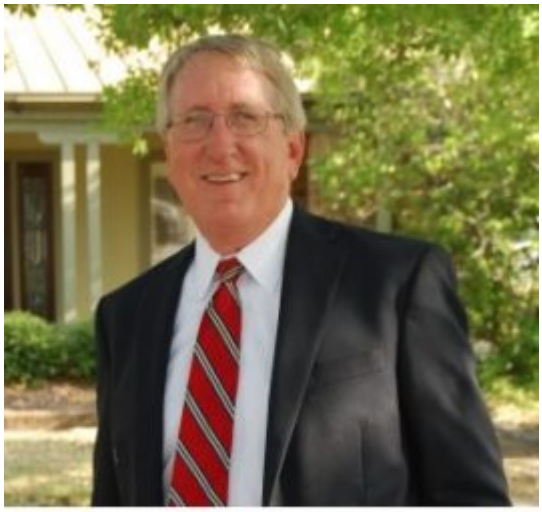
Before I get into the details, let me start with a disclaimer: I like Kyle Hawthorne. He is active in the Boys and Girls Club of Brazos Valley, and he is an overall good guy, thus I took no pleasure in filing the misconduct complaint. The rest of the judges that I mention today? I should have burned them a long time ago.

In a very real sense, Judge Hawthorne is merely a product of his environment, namely the "good old boy" legal culture in Texas (and elsewhere) that expects judges to do favors for their friends, political supporters, and former law partners. I doubt that it ever occurred to Judge Hawthorne that he was doing something wrong by favoring his former law partner, but then he has not been representing clients who suffer from his favoritism. Here's an excerpt from the misconduct complaint:

> *On June 26, 2018, I learned that Judge 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.*

By itself, the email account may not seem like a big deal. When combined with a history of blatant favoritism toward his former law firm, however, the arrangement really starts to stink. Does Judge Hawthorne still have a financial connection to the firm? Is he secretly communicating ex parte with his former partners? Probably not, but I should not have to wonder, and neither should my clients.

Here's the backstory: In 2015, my friend and fellow lawyer Bill Youngkin represented three defendants in a real estate dispute before Judge Hawthorne, while the plaintiff was represented by the judge's former law partner, Jay Goss, and Houston attorney Karl Hoppess.



Attorney Jay Goss, a.k.a. "Dirty Jay"

Bill once told me that Jay was “the most convincing liar I’ve ever known,” and it’s an apt description. Unlike Robertson County shyster Bryan F. “Rusty” Russ, Jr., who is a prolific liar but not a particularly effective one, Jay is one of the smoothest liars I’ve ever heard. He tells so many lies so quickly and convincingly that other lawyers (*e.g.*, me) struggle to keep up with them. Incidentally, that’s a real problem if you’re in front of Judge Travis Bryan, because Judge Bryan famously refuses to read the pleadings in civil cases. He enters the courtroom without a clue about the case, Jay lies about the facts and the law at 100 miles per hour, and Judge Bryan gobbles it all up like a starving chicken, then screws up the case accordingly.

But I digress.

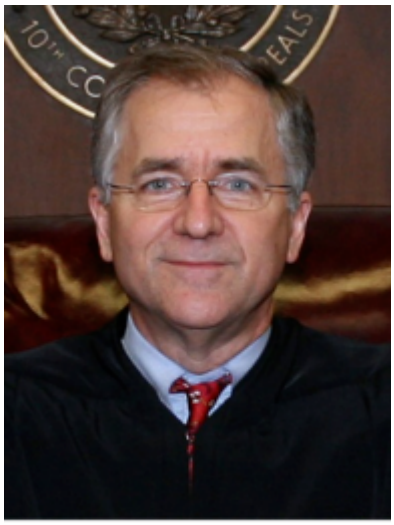
In the case before Judge Hawthorne, Bill filed a motion for summary judgment because the plaintiff had no evidence to support his claims of real estate fraud. One day before the deadline to respond to that motion, Jay amended the lawsuit to name Bill as a defendant, and he simultaneously filed a motion to disqualify Bill from the case. Let me translate: Jay’s client was about to lose on summary judgment, so Jay sued his *opposing counsel* to gum up the case and buy himself more time.

The claims against Bill were ridiculous. Jay’s client sued Bill for breach of contract, for example, even though Bill was not a party to the contract, had never been a party to the contract, and was never even *accused* of being a party to the contract. Jay’s client sued Bill for fraud because (1) Bill announced a settlement agreement years earlier in open court in a related lawsuit and (2) Bill’s clients *supposedly* did not comply with the settlement agreement, therefore Jay theorized that (3) Bill’s clients never *intended* to comply with the settlement agreement, and (4) Bill must have known that they never intended to comply, therefore he was somehow a party to a fraud.

I entered the case on behalf of Bill and the other defendants, and I immediately filed a motion to dismiss the bogus claims against Bill. For more than 100 years, Texas courts have ruled that you cannot sue opposing counsel for statements made in the courtroom, and for as long as anyone can remember, courts have held that you cannot sue someone for breach of contract unless he or she is a party to the contract. Judge Hawthorne ignored the law and denied the motion to dismiss, so we appealed to the Tenth Court of Appeals in Waco.

THE WORST APPELLATE COURT IN TEXAS

On April, the legal publication *Law360* quoted me as saying that the Tenth Court was the "least respected appellate court in the state, for good reason." I said it alright, and I stand by it.

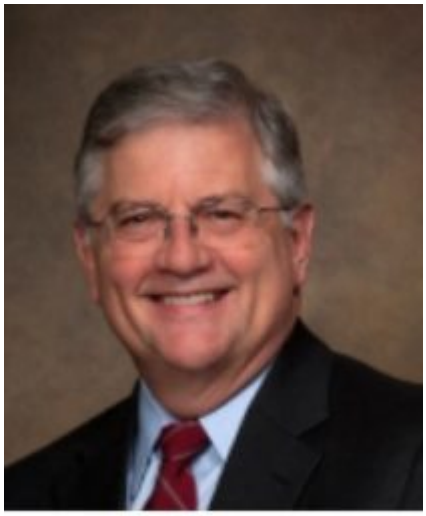


Chief Justice Tom Gray
Tenth Court of Appeals

Let me begin with one of the worst examples of political favoritism I've ever seen in any court. In *Clayton Williams Energy, Inc. v. Gloria Neal, et al.*, Cause No. 14-001392-CV-361 (361st District Court of Brazos County), College Station attorney Gaines West switched sides during the lawsuit, representing new clients against his former clients *in the same case*. And West is no ordinary attorney. He formerly served as the chairman of both the Texas Supreme Court's Grievance Oversight Committee and its Board of Disciplinary Appeals, and even now he advertises himself as a legal ethics expert.

That's part of what made the case so ironic. It shouldn't take a lawyer to understand that you cannot switch sides in the same case, so I filed a motion to disqualify West. The decision for 361st District Judge Steve Smith should have been a no-brainer, but Judge Smith has his own well-documented history of favoritism and political games (more on that below). He denied the motion, so we filed a petition in the Tenth Court to force West's recusal.

The Tenth Court ordered West to respond to our petition, then it played one of the oldest tricks in the book: it denied the petition without an explanation. Why? When an appellate court wants to do something indefensible, the court doesn't try to defend it. Instead the appellate court just affirms the trial court without an explanation, virtually guaranteeing that a higher will not take up the case. After all, higher courts look for erroneous statements of the law, and lower courts cannot erroneously state the law when they make no statement at all.



Justice Rex Davis
Tenth Court of Appeals

The entire opinion authored by Justice Al Scoggins reads as follows: "Relator's petition for writ of mandamus is denied." That's it, nothing more. The Tenth Court had circled the wagons to protect a politically-influential lawyer, never mind the severity of his misconduct.

On the other end of the spectrum is my client, Bill. Chief Justice Tom Gray and Justices Rex Davis and Al Scoggins are the only judges on the court, and Bill made the mistake of supporting other candidates against Chief Justice Gray and Justice Scoggins. It has cost him and his law firm dearly.


Gaines West

In the appeal from Judge Hawthorne's decision, the Tenth Court predictably ruled against Bill in an opinion authored by Justice Davis. The court badly misrepresented the facts, which is another common tactic when an appellate court wants to do something shady (if an appellate court misstates the law, a higher court will likely take up the case and reverse it, but nobody cares if the appellate court misstates the facts). According to the opinion, for example, I supposedly failed to raise a critical issue in the trial court, therefore it could not be considered on appeal. In a motion for rehearing, however, I directed the court's attention to the trial court transcript and clerk's record, where I unequivocally raised the issue verbally and in writing.

The Tenth Court asked Jay's client to respond, and he could not deny what was plainly in the record, yet the Tenth Court arbitrarily refused to correct its decision. Fortunately, the Texas Supreme Court took up the case and *unanimously* reversed the Tenth Court on April 27, 2018. The Supreme Court sent the case back to Judge Hawthorne to determine the amount of mandatory attorney fees and sanctions.

BACK TO MAYBERRY

After getting reversed unanimously by the Supreme Court, you'd think Judge Hawthorne might be a little more circumspect about his favoritism. No such luck.

At a June 28, 2018 hearing on fees and sanctions, Jay 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. Jay nonetheless argued that I should only be awarded attorney fees attributable to trial court proceedings, *i.e.*, $8,290.80. Thus at a bare minimum, my opposing counsel *conceded* that my client was owed $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. As a sanction for filing the frivolous claims, he awarded a paltry $250 sanction.

Furthermore, Judge Hawthorne denied my request for fees and costs related to the June 28, 2018 hearing, including the $775.78 it cost me to travel from New York to Bryan. He did so even after I submitted case law showing that I was entitled to receive fees and costs related to a post-remand hearing.

Message received, your honor, loud and clear: "This here is Brazos County and we don't need no stinkin' law — we'll do things however we want."

MORE DIRTY LAUNDRY FROM THE TENTH COURT

The Tenth Court is pretty crafty with its dirty tricks, always hiding behind the facade of plausible deniability. A few years ago, for example, a colleague represented a public official against Chief Justice Gray. Shortly thereafter, the Tenth Court ordered one of his other cases (*i.e.*, a totally unrelated case) to mediation.

That means nothing to the average citizen, so allow me to explain. I'm not aware of another case where the Tenth Court ordered an appeal to mediation on its own initiative, as it did in this instance. It may have happened, but it is very rare. Furthermore, the case had already been to mediation at the trial level and mediation had failed, hence the trial and the appeal. By ordering the case to mediation again, however, the Tenth Court delayed the case for months and cost my colleague's clients thousands of dollars in additional mediation fees and attorney fees.

The public would never pick up on these subtleties, but those of us inside the game knew exactly what was happening: the Tenth Court was punishing innocent clients in order to send a message to their attorney, *i.e.*, "If you cross one of our judges, we will make you regret it."

In another instance, a different colleague (a former elected official) asked me to take over an appeal because the Tenth Court's judges considered him a political enemy, and he was afraid they would retaliate against his client. (After today, I don't think other lawyers will be asking me to take over appeals in the Tenth Court).

The Tenth Court's judges also believe in guilt by association. Consider *Swan v. Bienski Properties, L.P.*, Case No. 10-14-00309-CV, where the appellants are represented by Matt Doss, a lawyer with whom I formerly practiced (and Bill Youngkin's current partner). That case has been pending for almost four years *even though the appeal is unopposed*.

The briefing in that case was completed three years ago, the appellee never responded, and the case was finally submitted for decision on January 28, 2016, yet the court will not make a decision. That illustrates another way that the Tenth Court judges retaliate: if they don't like you or your attorney, they just leave your case in limbo for years.

And then there's the problem of incompetence. Lest you think that I'm complaining about cases that I lost, let's consider a case that I won. In *In re John C. Paschall*, Case No. 10-12-00339-CV, I represented the plaintiffs against former Robertson County District Attorney John Paschall, who was serving as the executor of an estate. As a result of the evidence that we uncovered, Paschall pleaded guilty to pilfering hundreds of thousands of dollars from the estate and had to surrender his law license.

Before Paschall was exposed, however, he asked the Tenth Court to block my request for estate documents, and the Tenth Court denied his request. In a February 7, 2013 opinion, Justice Scoggins described the case as a "will contest" and analyzed it accordingly. The problem? My clients were not contesting the will, ergo it was not a "will contest." [Update 07/12/2018: My clients challenged a trust and argued that if the trust did not exist, then the will failed. Justice Scoggins got it backwards, stating that if the will failed then the trust failed.]

Worse, Justice Scoggins had been a probate judge for most of his career before his election to the Tenth Court, ergo he should have been an expert on what is or isn't a "will contest." I didn't say anything at the time because my clients won, but that's the sort of rank incompetence that I've come to expect from the Tenth Court.

And let's not forget that Chief Justice Tom Gray was caught on video ten years ago secretly entering the offices of then-Justices Felipe Reyna and Bill Vance, his avowed enemies, after hours and without their knowledge or permission. Under most circumstances, that would be called breaking and entering. Instead of referring the matter to prosecutors or a psychiatrist, however, the State Commission on Judicial Conduct gave Chief Justice Gray an "admonition," *i.e.*, the lowest form of punishment.

THE WORST JUDGE IN BRAZOS COUNTY

Full disclosure: I have never cared for 361st District Judge Steve Smith, who ranked at the bottom of the last survey of Brazos County lawyers. My first experience with him was the incident that I described above, *i.e.*, when he retaliated against me and my client because of something that happened in Houston and was none of his business. Afterwards, I met with him in his chambers to make peace, and we shook hands and agreed to let bygones be bygones. Then I found out that he was still talking trash about me behind my back. I guess I should not have been surprised, because Judge Smith is the chief gossip of the Brazos County Courthouse, frequently behaving like a back-stabbing little seventh-grade girl.

Judge Smith favors the popular kids, and I previously mentioned how he covered for Gaines West, allowing him to switch sides in a pending lawsuit. In a sane world, Judge Smith would have bounced West from the case and referred him to state bar prosecutors. In Judge Smith's courtroom, however, there's not a lot of sanity to be found.

Last year, for example, I appeared before Judge Smith on behalf of the same clients that I was representing before Judge Hawthorne. The two cases were related, and Jay Goss and Karl Hoppess represented the opposing parties. During a March 28, 2017 hearing, Jay was forced to admit that he had filed suit on behalf of people who were not his clients, *i.e.*, people who did not know that he was purporting to file claims on their behalf because he had never spoken to them. Read the transcript for yourself. Jay was also forced to admit that he subsequently solicited some of those same people and asked for permission to represent them, although others had never given permission for him to file suit.

In Texas, that's called barratry, and it's more than a violation of the bar rules: it's a third-degree felony punishable by up to ten years in prison *for each violation*. Did Judge Smith refer Jay to the district attorney's office or to state bar prosecutors? Of course not. Jay is one of the popular kids, so Judge Smith allowed him to continue representing people who were not and are not his clients, some of whom do not know that a lawsuit is being prosecuted in their respective names.

And people wonder why I'm so disillusioned.

A CHALLENGE TO THE GOOD-OLD-BOY JUDGES OF BRYAN AND WACO

Nowadays most of my practice is in other parts of Texas or in other states, so I don't have as much to fear from the judges in Waco and Bryan. For the record, neither Bill Youngkin nor Matt Doss (nor any other lawyer) knew that I would be publishing this post. If Bill or Matt had known in advance, they would have tried to stop me.

That said, I have a challenge for Chief Justice Gray, Justice Davis, Justice Scoggins, and Judge Smith: man up. Instead of trying to retaliate against me, Bill, Matt, or our respective clients with dirty little tricks behind the scenes, meet me face to face in a political debate. You pick the time and the place, and we'll let the voters decide whether I'm making this stuff up.

Uncategorized
Maryland high court whitewashes criminal misconduct of Hillary Clinton lawyers

Edit

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Michael Biggs

Ty Perhaps you should start a committee to explore a run against them. Only joking, but knowing small towns it will probably be spread faster than the truth.

Unlike · Reply · 2 · 3d

Diane Gonzales

Go get em Ty

Unlike · Reply · 2 · 3d

Scott Keon

Ty Clevenger rips the "Good old Boy" system of Texas jurisprudence a new one, in a manner that would make any proctologist proud.
Hoping to end this corruption by shining a bright light on their actions.
Ty Clevenger, you are a badass!!!

Unlike · Reply · 1 · 2d

Ray Click

Thank you Ty for your courageous fight to protect us from these criminal Judges.

Like · Reply · 2d

Facebook Comments Plugin

Ty Clevenger says:
July 9, 2018 at 3:55 pm (Edit)
07/09/2018

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About this blog

LawFlog is the blog of Ty Clevenger, a Texas attorney who lives in Brooklyn. Posts are irregular at best (and Dulcolax doesn't seem to help). You can reach Ty at tyclevenger at gmail dot com, you can follow Lawflog on Facebook or Twitter (@Ty_Clevenger), or you can leave a voice message at 979-985-5289.

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Exhibit 3

BRUCHEZ, GOSS, THORNTON, MERONOFF & BRIERS
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Board Certified - Civil Trial Law and
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Texas Board of Legal Specialization

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(979) 268-5323 FAX

July 10, 2018

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

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

To Whom It May Concern:

On July 9, 2018, Ty Clevenger, in his capacity representing Bill Youngkin, filed a letter complaining of Judge Kyle Hawthorne, Judge of the 85th District Court Brazos County, Texas. The letter was filed simply because Mr. Clevenger did not receive the result that he wanted, so now it appears he is attempting to punish Judge Hawthorne for his recent ruling. I would like to respond to the incorrect facts contained in Mr. Clevenger's letter.

Use of email address

Judge Hawthorne was a colleague of mine from 1987 through December 31, 2014. On January 1, 2015, he took the bench of the 85th District Court. During the first week in January 2015, the law firm changed the passwords to deny Judge Hawthorne access to our server and to his former email address. We did not provide Judge Hawthorne with the new password and therefore he had no way to access either his old files, nor his old **khawhtorne@bruchez.com** email address. All of the emails from the **khawthorne@bruchez.com** address were forwarded to me for the next nine months so that we could monitor if any of his former clients were attempting to contact him. Additionally, if anyone that had that email address needed the firm for a new matter, the firm could respond. There were a few personal emails that came through on that address (such as notices of board meetings with the Boys and Girls Club which Judge Hawthorne was a board member), and I would contact Judge Hawthorne and tell him about the email so that he could notify the sender to change his email address.

Since January 1, 2015 Judge Hawthorne has not had access to this email account, nor could any member of the law firm or public communicate with him at that address. There certainly has never been any impropriety nor any appearance of impropriety in this case as both Bill Youngkin and Ty Clevenger were well aware of the former relationship between Judge Hawthorne and this firm.

Facts in Youngkin vs. Hines

Mr. Clevenger completely misrepresented the procedural history of the *Youngkin v. Hines* case. While it is true that the Supreme Court remanded the case to Judge Hawthorne for a determination of attorney fees and sanctions under the Anti-Slapp statute, the Supreme Court declined to render a decision on attorney fees which was requested by Mr. Clevenger. Reverend Hines alleged that Mr. Youngkin agreed to have his clients Buetta and Regina Scott (Scott) deed to Reverend Hines' family their ½ interest in a 45 acre property in Brazos County, Texas. This settlement was dictated by Mr. Youngkin in open court and agreed to by Reverend Hines and was recorded by the court reporter. In reliance on this promise made by Mr. Youngkin, Reverend Hines allowed the prosecution of Mr. Youngkin's case involving multiple properties to go forward. Two months later, instead of deeding their ½ interest in the 45 acres to Reverend Hines' family, Mr. Youngkin prepared a deed transferring the ½ interest in the 45 acres from Scott to another Youngkin client named Curtis Capps. Reverend Hines then sued Scott and Capps for fraud, conspiracy and misrepresentation. Mr. Youngkin filed a motion for summary judgment motion claiming that fraud could not be proved against Scott because Mr. Youngkin was the one that made the representations in court and his words made as an open court Rule 11 Agreement did not bind Scott. Based on that position, Mr. Youngkin was brought into the lawsuit since he was the one that made the representation and agreement.

Youngkin filed an Anti-Slapp claim arguing that he could not be sued because he was protected by the first amendment right to petition and right to free speech, and there was a litigation privilege. Reverend Hines countered by saying that the Anti-Slapp did not apply because it was not Youngkin's first amendment right, but Scott's that Youngkin was exercising. Moreover, even if Anti-Slapp did apply, Reverend Hines had made a prima facie case against Youngkin for fraud and conspiracy with Capps as required by the statute and therefore the claim should not be dismissed. Judge Hawthorne denied Youngkin's Anti-Slapp Motion to Dismiss.

Youngkin appealed the case to the 10th Court of Appeals and in affirming Judge Hawthorne's ruling, the 10th Court stated:

> **"We conclude that Hines established by clear and specific evidence, including circumstantial evidence, a prima facie case for each essential element of his fraud and conspiracy claims against Youngkin." 524 S.W.3d 278, 291**

The 10th Court of Appeals went on to say in an extraordinary footnote:

> **"We unfortunately must address the unprofessional comments made by Youngkin's attorney in his reply brief. These personal attacks ("dirty lawyering," "casual dishonesty," "unscrupulous lawyers") against Hines' counsel have no place in an appellate brief, and they blatantly violate several provisions in the Texas Lawyer's Creed pertaining to civility and courtesy. These comments add nothing to the case; they only reflect poorly on Youngkin's attorney."**

Youngkin then appealed to the Supreme Court which had previously taken up several Anti-Slapp cases and was defining the boundaries of Anti-Slapp statute. Even Mr. Clevenger stated that this was a case of first impression of a lawyer using the Anti-Slapp. The Supreme Court found at 546 S.W.3d 675, 683 that the Anti-Slapp statute applied and "assuming without deciding that Hines met his burden [of clear and specific evidence of fraud and conspiracy against Youngkin], we nevertheless hold that Youngkin is entitled to dismissal because he established the affirmative defense of attorney immunity." Therefore, the court ruled that even if an attorney conspires to commit fraud and then commits fraud, if he does so while in the courtroom and representing a client, he cannot be held accountable. As such, the court remanded the case for impositions of attorney fees and sanctions under the Anti-Slapp statute. Clevenger testified in the original motion to dismiss hearing that his attorney fees for the trial court were $8,290.80 and he estimated that his appellate fees would be $9,000.00. The Supreme Court could have rendered on this testimony, but chose to return it for a hearing so that Judge Hawthorne could take into consideration the totality of the evidence and circumstances in setting both the sanctions and attorney fees.

Statements by Jay Goss in the June 28th hearing

At the June 28th hearing, our team reminded Judge Hawthorne that at the original motion to dismiss hearing, we had advised Mr. Youngkin that Reverend Hines would dismiss him if he would simply admit that he was representing Scott when he made the agreement in open court and that he had no interest in the property, but was only acting as an attorney. We followed that up with a letter, prior to any appellate court briefing, making the same offer. Mr. Youngkin refused to make those admissions. We urged Judge Hawthorne not to give any appellate fees because this issue could have been avoided if Mr. Youngkin had simply admitted the state of his representation. Further, Mr. Clevenger admitted at the June 28th hearing that there were lawyers in Bryan, Texas that could have handled this matter for Mr. Youngkin. Notwithstanding that, Mr. Youngkin chose to employ an attorney in New York who had to spend additional time and expense coming from New York to argue in the trial court. In his letter to the Commission, Mr. Clevenger stated, "my opposing counsel conceded that my client was owed *at least* $8,290.80 in attorney fees." This is an incorrect statement. I argued that the court should award "*at most*" $8,290.80. I urged the court not to award any appellate fees (for the reasons stated above) and to only consider the attorney fees that a lawyer in Bryan, Texas would have incurred, not extra fees and expenses for travel from New York.

Our team provided Judge Hawthorne with many cases where courts had awarded only nominal sanctions for Anti-Slapp violations, including some with only $1.00 in sanctions, which were upheld on appeal. Accordingly, a $250.00 sanction in a case where the 10th Court of Appeals found that there was clear and convincing evidence of a prima facie case of fraud and conspiracy and where the attorney's attorney was reproached in a footnote for his conduct is certainly not out of line.

Reputation for Favoritism

Mr. Clevenger falsely claims that Judge Hawthorne has "earned" a reputation for favoritism toward me. In the last judicial poll in our county, Judge Hawthorne's approval rating was more than 10 points above the next judge in the county. Clearly Brazos County lawyers considered him fair and impartial. If Mr. Clevenger has "additional examples of Judge Hawthorne's favoritism" as he claims, I would certainly like for him to bring them forward so I can confront those false allegations as well.

In conclusion, Judge Hawthorne has not violated any Canon of Judicial Conduct. This is a case of a client (who is an attorney) and his attorney who has lost a hotly contested issue exhibiting sour grapes.

Kindest regards,

Jay B. Goss

15-6006:JBG/dp
cc: Mr. Karl C. Hoppess – kchoppess@swbell.net
Mr. Bill Youngkin – bill@youngkinlaw.com
Mr. Ty Clevenger – tyclevenger@yahoo.com

Exhibit 4

Subject: Billie G. Hines, Jr. v. Buetta Scott, Rajena Scott, and Curtis Capps -- Memorandums of Law TCPA Sanctions and Attorney Fees

From: kchoppess@swbell.net
To: tyclevenger@yahoo.com; bill@youngkinlaw.com
Cc: jgoss@bruchez.com; dporter@bruchez.com; alexa@youngkinlaw.com; kevans@brazoscountytx.gov; khawthorne@bruchez.com
Date: Tuesday, June 26, 2018, 11:56:07 AM EDT

Counsel,

Attached herewith and filed with this court this morning are Plaintiff's Memorandum of Law on Texas Citizens Participation Act: Sanctions; and Plaintiff's Memorandum of Law on Texas Citizens Participation Act: Attorney Fees.

Ms. Evans: Kindly forward to Judge Hawthorne. The hearing is set for Thursday, June 28th at 3:00 p.m. Thank you.

KARL C. HOPPESS & ASSOCIATES, P.C.

8200 Wednesbury, Suite 420

Houston, Texas 77074

Ph: (713) 651-9777

Fax: (713) 651-1620

Memorandum of Law TCPA.Sanctions.pdf Memorandum of Law TCPA.AttorneysFees.pdf


6.7MB


2.8MB

Exhibit 5

No. 16-000649-CV-85

GREGG FALCONE	§	IN THE 85th DISTRICT COURT
	§	
VS.	§	OF
	§	
THE KNOWN AND UNKNOWN HEIRS OF JOSHUA WASHINGTON, SR.	§	BRAZOS COUNTY, TEXAS

ORDER APPOINTING 2nd SUBSTITUTE ATTORNEY AD LITEM

On January 24, 2018 the Court was notified that Jean Phelps is unavailable to perform the necessary duties as attorney ad litem on behalf of the Known and Unknown Heirs of Joshua Washington, Sr., Defendants in the above styled and numbered case.

THEREFORE, IT IS ORDERED that Jean Phelps is removed as attorney ad litem in this case and that Jana Beddingfield, as attorney and member in good standing of the bar of the State of Texas is appointed as attorney ad litem to represent and defend the suit on behalf of the Known and Unknown Heirs of Joshua Washington, Sr., Defendants in the above styled and numbered case, and the unknown heirs of said Defendants who have been served by publication.

SIGNED on January 26, 2018.

K. Hawthorne

KYLE HAWTHORNE
Presiding Judge