



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 14-0209-DI

**PUBLIC REPRIMAND
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE MIKE HERRERA
383RD JUDICIAL DISTRICT COURT JUDGE
EL PASO, EL PASO COUNTY, TEXAS**

During its meeting on February 10-12, 2016, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Mike Herrera, Judge of the 383rd Judicial District Court, El Paso, El Paso County, Texas. Judge Herrera was advised by letter of the Commission's concerns and provided written responses. Judge Herrera appeared before the Commission on February 10, 2016, 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 Mike Herrera was Judge of the 383rd Judicial District Court, El Paso, El Paso County, Texas.
2. On or about June 6, 2012, Judge Herrera filed a petition for divorce against his wife, Melissa Carrasco.
3. The divorce case was assigned to Judge Herrera's court.
4. In his testimony before the Commission, Judge Herrera acknowledged that he became aware that his own divorce case had been assigned to his court on the same day it was filed.
5. Judge Herrera allowed the divorce case to remain pending in his court for several months.

6. According to Judge Herrera, he let the case remain in his court because he was “trying to save the marriage and [he] did not want to do anything on the case,” adding that he saw his role in the divorce proceeding as that of a husband, not as an attorney or judge.
7. In addition, Judge Herrera expressed the following concerns regarding his divorce:

I did not care to place my family in the same position as other litigants find themselves, in conflicts and court hearings, which, for the most part only benefit the attorneys financially. It is really sad and embarrassing to see the reputation of some of the litigants being dragged in the mud in these court proceedings.
8. Judge Herrera also testified that it had been his experience that “there is a lot of unnecessary litigation in family court” and “[he] simply was not going to allow [his] family to be placed in that situation.”
9. During June and July of 2012, Judge Herrera and Carrasco exchanged emails in which they discussed the terms of their divorce.
10. However, on July 16, 2012, after retaining the services of attorney Angelica Carreon-Beltran (“Carreon”), Carrasco filed a counter-petition for divorce against Judge Herrera, which was also assigned to Judge Herrera’s court because of the original petition having been filed there.
11. Judge Herrera was unhappy with this development in the case, testifying that he asked Carrasco, “Why are you involved with Carreon, anyway? You know she doesn’t like me,” adding that he stated, “[Carreon] is going to cause nothing but problems.”
12. According to Judge Herrera’s testimony, he refused to recognize the “legitimacy” of Carreon’s representation of Carrasco because, in his opinion, Carreon had improperly solicited Carrasco as a client, had campaigned against him in an election, and was “dishonest and unethical and unreasonable.”
13. On September 7, 2012, Judge Herrera filed a notice of nonsuit of his divorce petition, leaving Carrasco’s counter-petition pending in his court.
14. On or about September 11, 2012, Carreon propounded discovery requests upon Judge Herrera in connection with the pending counter-petition.
15. On October 16, 2012, in response to Carreon’s discovery requests, Judge Herrera filed with his court a Motion to Extend Discovery Answer Date and Motion for Protective Order.
16. During his testimony before the Commission, Judge Herrera acknowledged that, technically, he had petitioned himself for relief when he filed the motions; however, he believed he had done nothing inappropriate since he never ruled on the motions.
17. Judge Herrera explained that it was only when he realized he would be unable to avoid divorce that he sought to have the case transferred to another court.
18. In a letter dated September 27, 2012, Regional Presiding Judge Stephen Ables requested that the District Clerk transfer the Herrera divorce case to the 65th District Court.
19. On October 17, 2012, Judge Ables signed an Order Transferring Case.
20. The letter and order were filed on October 18, 2012.

21. On May 13, 2013, Judge Herrera's divorce was finalized through an Agreed Final Decree of Divorce signed by Local Administrative Judge Patrick M. Garcia, Judge of the 384th District Court.
22. In his testimony before the Commission, Judge Herrera stated that, in hindsight, he should have asked Judge Ables to transfer his divorce case to another court immediately after he became aware that it had been filed in his own court.
23. While the divorce was pending, Carreon filed motions seeking to have Judge Herrera recused from presiding over the *Moreno* and *Quezada* cases, which were pending in his court and in which she served as attorney of record.
24. Carreon filed the recusal motions in the *Moreno* and *Quezada* cases on March 18, 2013 and April 5, 2013, respectively.
25. Shortly after the divorce was finalized, Carreon filed motions seeking to have Judge Herrera recused from presiding over the *Patriarchias* and *Galaviz* cases, which were pending in his court and in which she served as attorney of record.
26. Carreon filed the recusal motions in the *Patriarchias* and *Galaviz* cases on March 25, 2013 and April 25, 2013, respectively.
27. According to the allegations contained in Carreon's recusal motions, she believed Judge Herrera could not be fair and impartial in her clients' cases because of his bias against her, which came to light during her representation of Carrasco in the divorce.
28. On April 29, 2013, Judge Herrera sent a letter to Presiding Judge Ables requesting that the *Moreno* and *Quezada* cases be transferred out of his court, and that a hearing be held on the recusal motions in the *Patriarchias* and *Galaviz* cases.
29. In the *Moreno*, *Quezada*, and *Patriarchias* cases, Judge Herrera failed to timely rule on or refer the motions to Judge Ables in compliance with the Texas Rules of Civil Procedure.
30. On June 3, 2013, following a hearing, Judge Herrera was recused from hearing the *Patriarchias* and *Galaviz* cases.
31. On July 3, 2013, Judge Herrera sought to intervene in the June 3rd recusal decision by having an attorney file a Motion for Rehearing of Motion to Recuse on his behalf.
32. Carreon filed motions seeking to have Judge Herrera recused from presiding over three additional cases, which were pending in his court and in which she served as attorney of record.
33. On July 24, 2013, following a hearing on the motions, Judge Herrera was recused from those cases as well.
34. On September 4, 2013, Judge Herrera sought to intervene in the July 24 recusal decision by having an attorney file Motions for Rehearing/New Trial on his behalf.
35. On November 11, 2013, Judge Herrera's Motions for Rehearing/New Trial were denied.
36. Judge Herrera testified before the Commission that he attempted to intervene in the recusal proceedings because he disputed Carreon's allegations and believed he should be afforded the opportunity to respond.

37. According to Judge Herrera, if he had agreed to recuse himself in response to Carreon's allegations, he would have essentially been admitting that her claims were true, which admission would likely be used against him politically.
38. Judge Herrera testified that, in hindsight, he should have immediately referred the recusal motions to Judge Ables as required by law.
39. Judge Herrera added that he has implemented a new policy under which Carreon's motions to recuse are referred to Judge Ables within 24 hours.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part, that "A judge shall comply with the law..."
2. Canon 2B of the Texas Code of Judicial Conduct states, in pertinent part, that "A judge shall not allow any relationship to influence judicial conduct or judgment."
3. Canon 3B(1) of the Texas Code of Judicial Conduct states that, "A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate."
4. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part, that "A judge...shall maintain professional competence in [the law]."
5. Canon 3B(5) of the Texas Code of Judicial Conduct states that, "A judge shall perform judicial duties without bias or prejudice."
6. Article V, §1-a(6)A of the Texas Constitution provides that a judge may be disciplined for, among other things, willful or persistent violation of rules promulgated by the Supreme Court of Texas, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties.

CONCLUSION

The Commission concludes from the facts and evidence presented that Judge Herrera failed to comply with the law, demonstrated a lack of professional competence in the law, and engaged in willful and persistent conduct that was clearly inconsistent with the proper performance of his judicial duties when he (a) failed to take immediate steps to disqualify himself and/or transfer his own divorce case out of his court, (b) filed motions in his own court in connection with the pending divorce action, (c) failed to timely rule on or refer the recusal motions filed by Carreon in the *Moreno*, *Quezada*, and *Patriarchias* cases, and (d) attempted to intervene in proceedings relating to his own recusal by having an attorney file motions asking the judges presiding over the recusals to reconsider their decisions or grant a new trial. The Commission further concludes that Judge Herrera exhibited a personal animus against Carreon, which continues today, and allowed that adversarial relationship to influence his judgment and conduct in violation of Canons 2B and 3B(5) of the Texas Code of Judicial Conduct.

In connection with Judge Herrera's actions relating to Carreon's recusal efforts, the Commission notes that Texas courts have consistently held that judges subject to a motion to recuse should not file a response to the motion nor seek to have the recusal decision reconsidered or overturned. As the 5th Court of Appeals recently opined:

[T]his process contemplates the resolution of the [recusal] motion through the exercise of the independent judgment of the assigned judge absent any outside pressure. It would defeat the purpose of the “refer rule” to permit the challenged judge to insert herself in her official capacity as judge in order to exert pressure upon and influence the assigned judge’s judgment. It is not just inappropriate but blatantly improper for a challenged judge to take action designed to influence the outcome of the matter at issue. To hold otherwise would seriously compromise the independence of the assigned judge and undermine the integrity of the judicial recusal process.¹

In addition, the Commission considered Judge Herrera’s (a) lack of sincere contrition for his actions, (b) his continuing belief that his conduct was justified in light of Carreon’s actions, (c) the effect the misconduct had upon the integrity of and respect for the judiciary, and (d) the judge’s misuse of his position to satisfy his personal desires in the divorce action, to be aggravating factors² in determining the appropriate sanction in this case.

The Commission concludes that Judge Herrera’s conduct, as described above, constituted willful and/or persistent violations of Canons 2A, 2B, 3B(1), 3B(2), and 3B(5) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution.

In condemnation of the conduct described above that violated Canons 2A, 2B, 3B(1), 3B(2), and 3B(5) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution, it is the Commission’s decision to issue a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Mike Herrera, Judge of the 383rd Judicial District Court, El Paso, El Paso County, Texas.

Pursuant to this Order, Judge Herrera must obtain **six (6) hours** of instruction with a mentor, which instruction may include up to 3 hours of approved online courses or self-study, in addition to his required judicial education for Fiscal Year 2016. In particular, the Commission desires that Judge Herrera receive this additional education regarding a judge’s duty to (a) comply with all laws and rules relating to judicial disqualification and recusal and avoid becoming embroiled in a litigant’s recusal efforts; (b) recognize when relationships are improperly influencing judgment and conduct, necessitating recusal in order to avoid even the appearance of bias or prejudice; and (c) act at all times in a manner that promotes judicial impartiality, integrity and independence.

Judge Herrera shall complete the additional **six (6) hours** of instruction within **ninety (90) days** from the date of written notification of the assignment of a mentor. It is Judge Herrera’s responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **six (6) hours** of instruction described herein, Judge Herrera shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** by the Commission.

¹ *In Re Heidi Amos*, 397 S.W.3d 309, 313 (Tex.App. – Dallas, 2013) (citing *Carmody v. State Farm Lloyds*, 184 S.W.3d 419, 422 (Tex. App.—Dallas 2006, no pet.)).

² *In re Deming*, 108 Wn.2d 82, 736 P.2d 639, 659 (Wash. 1987).

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 25th day of February, 2016.

ORIGINAL SIGNED BY

Honorable Valerie E. Ertz, Chair
State Commission on Judicial Conduct