

BEFORE THE  
STATE COMMISSION ON JUDICIAL CONDUCT

INQUIRY CONCERNING  
HONORABLE DAVID LEWIS  
JUSTICE, 5<sup>TH</sup> COURT OF APPEALS  
DALLAS, DALLAS COUNTY, TEXAS  
JUDGE NO. 97



State Commission on Judicial Co  
**FILED**  
Clerk of the Commission

Date 10.12.16 In Re Judge No. 97  
By Judith Meyers

NOTICE OF NON-SUIT

TO THE HONORABLE MEMBERS OF THE COMMISSION:

COMES NOW, Examiners in the above cause, and pursuant to Rule 162 of the Texas Rules of Civil Procedure, files this Notice of Non-suit. For cause, Examiners would show the following:

Introduction

On June 16, 2016, the Commission voted to institute formal proceedings against Respondent, Justice David Lewis, an Associate Justice on the 5<sup>th</sup> Court of Appeals in Dallas, Dallas County, Texas, pursuant to the authority granted by Article 5, Section 1-a of the Texas Constitution, Chapter 33 of the Texas Government Code, and Rule 10 of the Procedural Rules for the Removal or Retirement of Judges. On October 11, 2016, Examiners' Notice of Formal Proceedings was filed in this case. A true and correct copy of the Notice is attached hereto as Exhibit A.

On October 11, 2016, after the filing of the Notice of Formal Proceedings, Respondent entered into a *Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action*. On that date, the Commission voted to accept Respondent's

resignation and the agreement was signed by the Chair of the Commission on October 12, 2016. A true and correct copy of the final Agreement is attached hereto as Exhibit B.

**Notice of Non-Suit**

As a result of the Respondent's Agreement to immediately resign from judicial office and to never serve as a judge in the future, and the Commission's approval of that Agreement, Examiners file this Notice of Non-suit and respectfully request that the above referenced formal proceeding be dismissed without prejudice.

**EXAMINERS**  
Respectfully submitted,

**State Commission on Judicial Conduct**  
P.O. Box 12265  
Austin Texas 78711  
(512) 463-5533  
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State Bar No. 24078121

By: \_\_\_\_\_

## CERTIFICATE OF SERVICE

Service of this Notice of Non-suit has been made on Justice David Lewis on October 12, 2016, in accordance with the Texas Rules of Civil Procedure.

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Geoffrey Weisbart  
State Bar No. 21102645  
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# **EXHIBIT A**

**FILED**

Clerk of the Commission

**BEFORE THE STATE COMMISSION**Date 10-11-16 In Re Judge No. 97**ON JUDICIAL CONDUCT**By Len Cur

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**INQUIRY CONCERNING****JUDGE NO. 97**

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**NOTICE OF FORMAL PROCEEDINGS**

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**TO THE HONORABLE DAVID LEWIS, JUSTICE OF THE FIFTH COURT OF APPEALS, DALLAS, TEXAS:**

Pursuant to TEXAS GOVERNMENT CODE Section 33.022 and RULE 10 OF THE TEXAS PROCEDURAL RULES FOR THE REMOVAL OR RETIREMENT OF JUDGES, this NOTICE is hereby given to the Honorable David Lewis, Justice of the Fifth Court of Appeals, Dallas, Texas, that formal proceedings have been instituted against him by the State Commission on Judicial Conduct, based upon the following:

**FACTUAL ALLEGATIONS**

1. At all times relevant hereto, the Honorable David Lewis was a Justice of the Fifth Court of Appeals, Dallas, Texas.<sup>1</sup>
2. Justice Lewis was elected to the Dallas Court of Appeals in November 2012, and began his term on January 1, 2013.
3. On October 7, 2014, Dallas Court of Appeals Chief Justice Carolyn Wright filed a sworn complaint with the Commission against Justice Lewis raising concerns about his fitness for office.
4. Chief Justice Wright alleged, among other things, that Justice Lewis (a) suffered from a physical and mental impairment that interfered with the performance of his duties; (b) was incompetent to perform the duties of office; (c) failed to treat his colleagues and court staff in a patient, dignified, and courteous manner; (d) improperly delegated judicial decision-making responsibilities to court staff; (e) failed to perform the duties of office and/or unreasonably delayed making decisions in cases; and (f) improperly announced his probable decision in a case during oral argument.
5. According to Chief Justice Wright, Justice Lewis failed to show up to work during the week of July 7, 2014, when he was one of the justices assigned to writ duty.

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<sup>1</sup> The Fifth Court of Appeals has appellate jurisdiction over civil and criminal cases arising from Dallas, Collin, Grayson, Hunt, Rockwall and Kaufman counties.

6. When Justice Lewis could not be located or contacted by Court personnel that week, the Chief Justice filled in for him on the writ panel.
7. During this absence, Justice Lewis contacted one of his staff attorneys from a hospital and told her that she had his permission to take action on the writ cases assigned to him while he was out.
8. When he returned to work, Justice Lewis told the Chief Justice that he had been hospitalized after taking a fall. Justice Lewis indicated that during his hospitalization, he learned that he had diabetes which he was unable to control. He later told Chief Justice Wright that it had been recommended that he see a psychiatrist for depression.
9. In September 2014, Justice Lewis experienced a serious medical emergency at work. Instead of calling an ambulance, the judge required one of his staff attorneys to drive him to the hospital.
10. In an undated incident, Justice Lewis was unprepared for *en banc* conferences involving cases that he and the other justices had prepared for many weeks in advance. When called upon to vote, it became evident to his colleagues that Justice Lewis had not read the briefs and did not comprehend his colleagues' discussions.
11. Chief Justice Wright counseled Justice Lewis for not being available for conferences with colleagues and for being unprepared. According to Justice Wright, "Justice Lewis is too impaired to read, comprehend, or articulate legal issues, and justice is not being served."
12. Chief Justice Wright provided examples of Justice Lewis' abusive treatment of court personnel, which she described as "disrespectful and disdainful."
13. According to Chief Justice Wright, Justice Lewis' improper use of his court computer caused the court to incur over \$20,000 in costs due to computer viruses directly attributed to Justice Lewis. The Chief Justice stated that "[Justice Lewis'] behavior has deteriorated to a point where it is hostile, unsafe, violates the oath of judicial office and the rules of judicial conduct, and reflects negatively on the judiciary."
14. Justice Molly Francis, a colleague of Justice Lewis on the 5<sup>th</sup> Court of Appeals, knew Justice Lewis when he was an attorney, where she believed him to be "healthy" with "a strong legal mind."
15. According to a sworn statement, Justice Francis has since observed that Justice Lewis is unable to perform the duties of office due to a serious illness. As a result of his inability to control himself "mentally or physically," Justice Francis expressed fear for Justice Lewis' safety and for the safety of court personnel.
16. Justice Francis recounted that she has personally observed Justice Lewis' inability to complete work; his unexplained absences from court; his admission that he would have his staff attorney to do the work for him; inappropriate comments to attorneys during oral arguments indicating his probable decisions in cases and demonstrating a lack of competence in the law; his admission to Justice Francis that he had not read the briefs or record in preparation for oral arguments; his anger and use of profanity toward Justice Francis after she counseled him about his conduct and lack of preparation; and odd personal phone calls at odd times.

17. Justice Francis described Justice Lewis' behavior as "erratic, hostile, and threatening." She indicated that his mood would quickly switch "from laughing and flippant to hostile, arrogant, and seething."
18. Another colleague on the 5<sup>th</sup> Court of Appeals, Justice Lana Myers, provided a sworn statement in which she recalled that, as a new judge, Justice Lewis "appeared to be very nervous, shaking physically and could not express his thoughts in a very coherent manner as his speech was often disjointed."
19. Justice Myers agreed that Justice Lewis was not prepared, did not appear to have read the briefs or record, could not offer any substantive discussion of the issues, did not know the law, and appeared to rely on staff attorneys to do the work for him.
20. Justice Myers concluded her statement by commenting that "Justice Lewis' cavalier attitude in deciding these issues is unprofessional and unacceptable...It is clear to me that, due to his mental and physical condition, he is incapable of carrying out his duties..."
21. Another colleague on the 5<sup>th</sup> Court of Appeals, Justice David Evans, described several instances in which he worked on a panel with Justice Lewis and concluded that Justice Lewis was not professionally competent in the law, was not capable of meaningful participation in the cases considered by the panel, and appeared to have delegated the responsibility of deciding cases and drafting opinions to his staff attorneys.
22. According to Justice Evans, while he and Justice Lewis served on a panel, he observed that Justice Lewis did not participate in discussions about the cases; did not make a substantive statement about any case; would wait until Justice Evans and Justice Fillmore decided each case before stating only that he agreed with them; would submit draft opinions purportedly written by him that required substantial revisions; and, upon discussing the revisions with Justice Lewis, it was evident that Justice Lewis had not participated in the drafting of opinions he submitted.
23. Justice Evans concluded that "Justice Lewis' non-participation deprived the parties to appeals of a three-justice decision provided for in the Texas Rules of Appellate Procedure..."
24. Gayle Humpa, Court Administrator for the 5th Court of Appeals, provided a statement recounting several instances in which Justice Lewis exhibited a poor judicial demeanor, mistreated court and facilities staff, and misused court staff, equipment, and furniture. She provided additional records, including emails and memoranda, in support of her testimony.
25. In December 2014, Justice Lewis was formally notified of the Commission's investigation and asked to respond to the allegations contained in the sworn complaints.
26. Shortly thereafter, Justice Lewis was voluntarily admitted into an out-of-state alcohol treatment center where he remained under treatment for approximately 6-8 weeks.
27. Justice Lewis appeared before the Commission on October 14, 2015, and provided testimony concerning his past and present physical and mental health condition, including his ongoing efforts to address his alcoholism.

28. In November 2015, Justice Lewis and the Commission filed an Agreed Motion to Suspend Justice Lewis Without Pay with the Texas Supreme Court.
29. On November 19, 2015, the Supreme Court granted the motion and issued an Order of Suspension without pay against Justice Lewis.
30. As a condition to being released from the Suspension Order, Justice Lewis was required to undergo an evaluation by a medical professional selected by the Commission to determine if he was fit to return to office.
31. In March 2016, Justice Lewis underwent a physical and mental health evaluation conducted by Dr. Dennis Dalton, who reviewed Justice Lewis' previous medical and treatment records, the sworn complaints filed by the judge's colleagues on the 5<sup>th</sup> Court of Appeals, and Justice Lewis' testimony before the Commission. Dr. Dalton also met with Justice Lewis on two occasions.
32. On June 7, 2016, Dr. Dalton issued the following findings, observations, and conclusions concerning Justice Lewis:
  - a. "...problems beginning as early as 2013."
  - b. "...impaired cognition and his intense feelings of anger in the year 2014."
  - c. "I would emphasize that brain atrophy, regardless of the etiology, is not likely to be reversed. The picture I put together after reviewing [a 2015 CT scan of Justice Lewis' brain] is of a person who was experiencing decreased functioning who was trying to cover that up."
  - d. Citing an August 2015 psychological study of Justice Lewis: "the fact still remains that Judge Lewis has some permanent damage that is apparent in his cognitive functioning...His psychological testing showed a mix of disinhibited response patterns, poor psychological boundaries and lapses in reasoning and thought processes that bordered on psychotic processing."
  - e. "It seems clear to me after reviewing all of the material and these 2 psychological and neuropsychological evaluations that a presence of some cognitive impairment and related emotional and behavioral phenomenon are present regardless of the etiology."
  - f. "My opinion is that David Lewis is not competent to return to work as a judge at this time."

#### RELEVANT STANDARDS

1. Article V, Section 1-a(6)A of the Texas Constitution provides, in relevant part, that, "Any Justice or Judge of the courts established by this Constitution or created by the Legislature may. . . be removed from office, for. . . incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office,. . ."
2. Article V, Section 1-a(6)B of the Texas Constitution provides, in relevant part, that, "[A]ny person holding an office named in [paragraph A of this subsection] who is not



eligible for retirement benefits under such laws may be removed from office, for disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature.”

3. Section 33.001(b) of the Texas Government Code provides, in relevant part, that, for purposes of Section 1-a, Article V of the Texas Constitution, “willful or persistent conduct that is clearly inconsistent with the proper performance of a judge’s duties,” includes “incompetence in the performance of the duties of the office” and/or “willful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business.”
4. Canon 2A of the Texas Code of Judicial Conduct provides that, “A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
5. Canon 3B(2) of the Texas Code of Judicial Conduct provides, in relevant part, that “A judge should be faithful to the law and shall maintain professional competence in it.”
6. Canon 3B(3) of the Texas Code of Judicial Conduct provides that, “A judge shall require order and decorum in proceedings before the judge.”
7. Canon 3B(4) of the Texas Code of Judicial Conduct provides, in pertinent part, that, “A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. . .”
8. Canon 3B(8) of the Texas Code of Judicial Conduct provides, in relevant part, that, “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.”

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#### CHARGE I

Justice Lewis’ conduct, described above, which includes, without limitation delegating his judicial functions to staff attorneys; interacting with colleagues and court staff in an impatient, undignified and discourteous manner; failing to prepare for oral argument; failing to participate on writ panels; unreasonably delaying the drafting and issuance of opinions; showing a lack of capacity to understand the gravity and nature of the disputes for which he is responsible to resolve; and committing to specific outcomes during oral argument without agreement of his colleagues on the panel:

- Constitutes a willful violation of the Code of Judicial Conduct, incompetence in the performance of his duties, and willful or persistent conduct that is clearly inconsistent with the proper performance of his duties and casts public discredit on the judiciary and the administration of justice, in violation of Article V, § 1-a(6)A of the Texas Constitution;
- Demonstrates a failure to comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A of the Texas Code of Judicial Conduct;

- Demonstrates a lack of professional competence in the law in violation of Canon 3B(2) of the Texas Code of Judicial Conduct;
- Demonstrates a lack of decorum in the proceedings before him in violation of Canon 3B(3) of the Texas Code of Judicial Conduct;
- Demonstrates a failure to accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law in violation of Canon 3B(8) of the Texas Code of Judicial Conduct; and
- Demonstrates a failure to act with patience, dignity and courtesy to all individuals with whom he interacts, in violation of Canon 3B(4) of the Texas Code of Judicial Conduct.

## CHARGE II

Alternatively, Justice Lewis suffers from a mental and/or physical disability, which is permanent in nature, and seriously interferes with the performance of his duties, mandating his removal from office pursuant to Article V, 1-a(6)B of the Texas Constitution.

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Justice Lewis is hereby notified that he has the right to file a written answer to the foregoing charges within fifteen (15) days after service of this Notice of Formal Proceedings upon him. Justice Lewis' verified answer should be delivered to the State Commission on Judicial Conduct, P.O. Box 12265, Austin, Texas, 78711..

Signed this 11th day of October, 2016.

### EXAMINER

Respectfully submitted,

### State Commission on Judicial Conduct

P.O. Box 12265

Austin Texas 78711

(512) 463-5533

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# **EXHIBIT B**



**BEFORE THE  
STATE COMMISSION ON JUDICIAL CONDUCT**

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**IN RE: HONORABLE DAVID B. LEWIS  
JUSTICE, FIFTH COURT OF APPEALS  
DALLAS, DALLAS COUNTY, TEXAS  
CJC No. 15-0122-AP**

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**VOLUNTARY AGREEMENT TO RESIGN FROM  
JUDICIAL OFFICE IN LIEU OF DISCIPLINARY ACTION**

This Agreement is being entered into by the undersigned parties pursuant to Section 33.032(h) of the Texas Government Code.

**WHEREAS** at all times relevant hereto, the Honorable David B. Lewis was a Justice on the Fifth Court of Appeals, Dallas, Dallas County, Texas; and

**WHEREAS** a sworn complaint was filed by the Chief Justice of the Fifth Court of Appeals against Justice Lewis alleging that the judge engaged in conduct that was inconsistent with his obligations as an appellate judge, including, without limitation: failure to perform writ duty; attempting to defer his judicial authority to a staff member; frequent unexplained absences from work; failure to prepare for and participate in *en banc* consideration of cases; exposing the court's computer network to multiple viruses; admitted failure to prepare for oral arguments; improperly committing to specific outcomes of cases during oral argument; combative interactions with staff and colleagues; generally erratic behavior regarding the resolution of cases before the Fifth Court of Appeals; and generally engaged in behavior demonstrating incompetence insofar as his duties as a Justice on the Court of Appeals are concerned; and

**WHEREAS** upon notice of the Commission's intent to investigate the allegations contained in the sworn complaint, Justice Lewis voluntarily took an indefinite leave of absence from the Court to address a medical condition that was interfering with his duties as a judge; and

**WHEREAS** pursuant to Misc. Docket No. 15-9241 dated November 19, 2015, Justice Lewis is serving an indefinite suspension from office; and

**WHEREAS** no Findings of Fact or Conclusions of Law have been made in connection with the above-referenced matter; and

**WHEREAS** the parties agree that the allegations of judicial misconduct or disability, if found to be true, could result in further disciplinary action against Justice Lewis; and

WHEREAS the parties to this Agreement are desirous of resolving this matter without the time and expense of further disciplinary proceedings; and

IT IS THEREFORE AGREED that Justice Lewis, upon the signing of this Agreement, agrees that he has officially and formally resigned his judicial duties and is entering into this Agreement to resolve the above-referenced complaint in lieu of disciplinary action by the Commission, pursuant to Section 33.032(h) of the Texas Government Code. The Commission agrees that it shall pursue no further disciplinary proceedings against Justice Lewis in connection with the above-referenced matter.

IT IS FURTHER AGREED that, upon the Commission's approval of this Agreement, Justice Lewis shall be forever disqualified from judicial service in the State of Texas, including (a) sitting or serving as a judge, (b) standing for election or appointment to a judicial office, and/or (c) performing or exercising any judicial duties or functions of a judicial officer, including the performance of wedding ceremonies.

IT IS FURTHER AGREED that any violation of this Agreement by Justice Lewis would constitute willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice in violation of Art. 5, §1-a(6)A of the Texas Constitution, and Section 33.001(b) of the Texas Government Code.

IT IS FURTHER AGREED that the Commission may enforce this Agreement through any legal process necessary, including injunctive relief; that Travis County, Texas, shall be the proper venue for any dispute between the parties or proceeding relating to this Agreement; and that Justice Lewis, individually, shall bear the expense, cost, and any reasonable and necessary attorneys' fees in the event any dispute arising under this Agreement is decided against him by any court or tribunal.

IT IS FURTHER AGREED that Justice Lewis, by his execution of this voluntary agreement, does not admit guilt, fault or liability regarding the matters contained in the complaint referenced above.

AGREED TO AND ACCEPTED upon its execution by the parties.

SIGNED BY:

David Lewis  
HON. DAVID B. LEWIS

Valerie E Ertz  
VALERIE ERTZ, CHAIR  
STATE COMMISSION ON JUDICIAL  
CONDUCT

Date: 11/10/16

Date: 10-12-16

**VERIFICATION**

State of Texas §  
County of Dallas §

**BEFORE ME**, the undersigned authority, on this day personally appeared **DAVID B. LEWIS**, who by me being first duly sworn, on his oath deposed and said that the above "Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action" is a true and correct recitation of the facts and accurately reflects his understanding of the terms and conditions of, and voluntary consent to enter into, such Agreement.

**SWORN TO BEFORE ME**, on this the 14<sup>th</sup> day of October ~~September~~, 2016.



*Roberta A. Louis*  
NOTARY PUBLIC, IN AND FOR THE  
STATE OF TEXAS

APPROVED AS TO FORM:

By: David Lewis  
ATTORNEY FOR JUSTICE DAVID B. LEWIS