

9079

Misc. Docket No. 02-\_\_\_\_\_

**ORDER  
OF  
THE SUPREME COURT OF TEXAS**

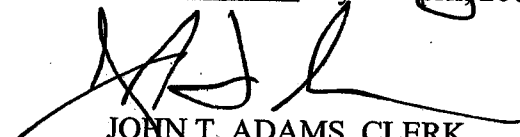
The State Commission on Judicial Conduct has recommended that the Honorable Michael Jackson Myers, Justice of the Peace for Precinct 2, Forney, Kaufman County, Texas, be suspended without pay pursuant to Texas Constitution Article 5, §1-a(6)A, and Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges, pending final disposition of the charges against him.

Having considered the Commission's Request for Order of Suspension of Judge and its exhibits, as well as the response of Judge Myers, it is the Order of the Supreme Court of Texas that the Honorable Michael Jackson Myers, Justice of the Peace for Precinct 2, Forney, Kaufman County, Texas, be immediately suspended from office without pay pursuant to Texas Constitution Article 5, §1-a(6), pending final disposition of the charges before the Commission.

As ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the  
City of Austin

This 9<sup>th</sup> day of <sup>May</sup>~~April~~ 2002.

  
JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

# State Commission on Judicial Conduct

## Officers

Michael L. O'Neal, Chair  
Kathleen H. Olivares, Vice-Chair  
Dee Coats, Secretary



Executive Director  
Margaret J. Reaves

## Members

L. Scott Mann  
Keith Baker  
Martin Chiuminatto, Jr.  
Gilbert M. Martinez  
James A. Hall  
Ronald D. Krist

April 25, 2002

RECEIVED  
IN SUPREME COURT  
OF TEXAS

APR 25 2002

JOHN T. ADAMS, Clerk  
By \_\_\_\_\_ Deputy

John T. Adams, Clerk  
Supreme Court of Texas  
P.O. Box 12248  
Austin, Texas 78711

Re: Inquiry Concerning CJC No. 01-0486-JP

Dear Mr. Adams:

Enclosed for filing are the original and 11 copies of *Commission's Request for Order of Suspension of Judge* in the above-referenced matter for the Court's consideration. Also enclosed is an Order for the Court's convenience. I ask that you please file stamp two of the copies provided and return them for our records.

If you have any questions or need further information, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Jacqueline R. Habersham".

Jacqueline Habersham  
Commission Counsel

JH/cv

Enclosures

xc: Honorable M. Jackson Myers  
By and Through His Attorney of Record  
Robert Provan  
Provan & Associates, P.C.  
401 W. 15<sup>th</sup> Street, Suite 875  
Austin TX 78701  
(VIA CMRRR NO. 7099 3220 0002 2843 9138)

**INQUIRY CONCERNING  
CJC No. 01-0486-JP**

**COMMISSION'S REQUEST FOR ORDER OF SUSPENSION OF JUDGE**

**TO THE HONORABLE SUPREME COURT OF TEXAS:**

COMES NOW the undersigned counsel for the State Commission on Judicial Conduct (hereinafter the "Commission") and files this request that the Supreme Court suspend, without pay, the Honorable Michael Jackson Myers, Justice of the Peace for Precinct 2, Forney, Kaufman County, Texas, and would show the Court as follows:

**I. Authority**

Article 5, §1-a(6)A of the Texas Constitution provides, in pertinent part, as follows:

On the filing of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or on the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission, may recommend to the Supreme Court the suspension of such person from office. The Supreme Court, after considering the record of such appearance and the recommendation of the Commission, may suspend the person from office with or without pay, pending final disposition of the charge.

Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges sets forth the procedure for the suspension of a judge by using substantially the same language as that used in the Texas Constitution, as recited above.

**II. Factual and Procedural Background**

Since his election to the office in January 1999, and at all times relevant hereto, Michael Jackson Myers (hereafter "Respondent") has been the Justice of the Peace for Precinct 2, Forney, Kaufman County, Texas.

On March 1, 2001, a complaint was filed with the Commission by the Kaufman County Auditor, Linda Spencer (now deceased), alleging willful and persistent conduct on the part of Respondent that is clearly inconsistent with the proper performance of his duties and casts public discredit upon the judiciary in violation of Article 5, §1-a(6)A of the Texas Constitution. The complaint advised the Commission that Respondent has been on disability leave from his office since January 2001, but remains on the county payroll and receives medical benefits. The disability has affected the Respondent's ability to perform the functions of his office, and has rendered him unable to fulfill his duties as justice of the peace.

On March 13, 2002, an affidavit was filed with the Commission by Kaufman County Judge James Wayne Gent (the "Sworn Complaint") detailing Respondent's requests for a leave of absence and his failure to perform his judicial duties, due to his medical disability (A true and correct copy of the Sworn Complaint is attached hereto as **Exhibit A** and incorporated herein for all relevant purposes).

### **III. Suspension**

On March 15, 2002, pursuant to Article 5, §1-a(6)A of the Texas Constitution and Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges, a copy of the Sworn Complaint was served on Respondent. In addition, Respondent was notified that the Commission had set the matter of Respondent's suspension for an informal hearing to be held in the Commission's offices located in the William P. Clements, Jr., Building, 300 West 15<sup>th</sup> Street, Suite 415, Austin, Texas on April 11, 2002, at 8:30a.m. (A true and correct copy of the notice to Respondent is attached hereto as **Exhibit B** and incorporated herein for all relevant purposes).

On April 11, 2002, Respondent and his attorney appeared at the suspension hearing held before the Commission. (A true and correct copy of the transcript of the April 11, 2002 suspension hearing is attached hereto as **Exhibit C** and incorporated herein for all relevant

purposes). After considering the Sworn Complaint, Respondent's testimony, and the argument of counsel, the Commission made the following findings:

1. At all relevant times hereto, Respondent was the Justice of the Peace, Precinct 2, Forney, Kaufman County, Texas.
2. Respondent has been on disability leave from his office since January 22, 2001. He has performed no judicial duties since that time.
3. Respondent suffers from a severe form of epilepsy, along with Tourette's Syndrome, that has affected his ability to perform the judicial functions of his office, and has rendered him unable to fulfill his duties as justice of the peace.
4. Respondent admitted that, due to his disability, he is unable to function as a judge.
5. Respondent remains on the Kaufman County payroll, and will receive his salary and medical benefits until the expiration of his term on December 31, 2002.

Based on the evidence before it, the Commission concluded that Judge Myers has engaged in willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or on the administration of justice in the State of Texas.

Based on the above, the Commission recommends that the Texas Supreme Court order the immediate suspension of Respondent from his office as Justice of the Peace, Precincts 2, Forney, Kaufman County, Texas, without pay. (A true and correct copy of the Commission's Recommendation of Suspension is attached hereto as **Exhibit D** and incorporated herein for all relevant purposes).

#### **Prayer**

WHEREFORE, premises considered, the undersigned counsel for the Commission respectfully requests that, pursuant to Article 5, §1-a(6)A of the Texas Constitution and Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges, this Honorable Court issue an order suspending Judge Michael Jackson Myers, without pay, from his office as Justice

of the Peace, Precinct 2, Froneys, Kaufman County, Texas, pending final disposition of the charges against him.

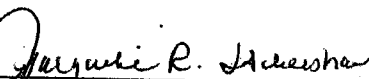
Respectfully submitted,

**State Commission on Judicial Conduct**  
P.O. Box 12265  
Austin Texas 78711  
(512) 463-5533  
FAX: (512) 463-0511

Margaret J. Reaves  
Executive Director  
Texas State Bar No. 16643800

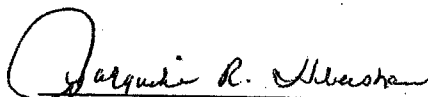
Seana Willing  
General Counsel  
Texas State Bar No. 00787056

Jacqueline R. Habersham  
Commission Counsel  
Texas State Bar No. 00785931

By:   
\_\_\_\_\_  
Jacqueline Habersham  
Texas State Bar No. 00785931

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the "Commission's Request for Order of Suspension of a Judge" has been sent to Judge Michael Jackson Myers, by and through his attorney of record, Robert Provan, Provan & Associates, 401 West 15<sup>th</sup> Street, Suite 875, Austin, Texas 78701, on this the 25th day of April, 2002, via certified mail, return receipt requested.

  
\_\_\_\_\_  
Jacqueline R. Habersham  
Texas State Bar No. 00785931

**AFFIDAVIT OF  
JUDGE JAMES WAYNE GENT**

**STATE OF TEXAS       §  
                                  §  
COUNTY OF KAUFMAN §**

**BEFORE ME**, the undersigned notary public, personally appeared the Honorable James Wayne Gent and upon his oath duly sworn testified as follows:

"I am over the age of 18, have never been convicted of a felony and have personal knowledge of all facts stated herein.

I am the County Judge in Kaufman, Kaufman County, Texas.

In January 2001, Judge M. Jackson Myers, Justice of the Peace in Precinct 2, Forney, Kaufman County, Texas, took a leave of absence from his duties as judge due to a medical illness. After January 9, 2001, Judge Myers provided the County with a doctor's report advising of his illness and temporary disability. In his January 9<sup>th</sup> letter, Judge Myers requested that the effective date of his leave of absence be January 22, 2000. I believe that Judge Myers made a typographical error and meant the effective date to be January 22, 2001.

On or about January 22, 2001, attorney David Asbill of Forney, Texas was appointed to serve as the temporary judge for Precinct 2 during Judge Myers' absence. Judge Asbill served in this capacity for approximately two (2) months.

Following Judge Asbill's appointment, Judge Myers contacted me requesting to return to work. Judge Myers returned to work, but left again after two (2) weeks. Judge Myers provided a second doctor's report advising the County that Judge Myers would not be able to work for an indefinite period of time. When David Asbill indicated that he no longer wished to serve as temporary judge, I appointed Don Cates to act as temporary judge for Precinct 2. Judge Cates continues to hold that position as of this date.

In October 2001, while implementing a new budget plan for the County, I contacted Judge Myers for an update on his medical condition and to inquire as to when he would be returning to work. Judge Myers advised the County, through another doctor's report, that he still would be unable to fulfill his duties as a judge.

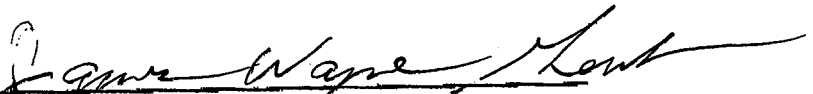
Since January 2001, Judge Myers has not performed any judicial functions. Judge Myers' term of office expires on December 31, 2002. Judge Myers remains on the County payroll, collecting a salary and receiving benefits, until the end of his term. Since January 2001, at an additional cost to the County, temporary judges have been appointed to handle all judicial responsibilities for Precinct 2.

**EXHIBIT   A**

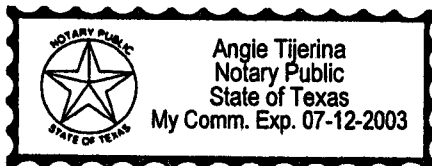
Although Judge Myers has been approached in the past about resigning his position, he refuses to do so because he does not want to lose his medical benefits.

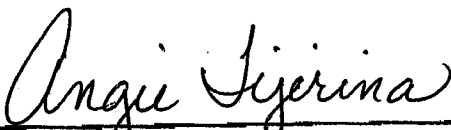
The facts stated in this document are within my personal knowledge and are true and correct."

**FURTHER AFFIANT SAYETH NOT.**

  
\_\_\_\_\_  
Honorable James Wayne Gent  
County Judge, Forney, Kaufman County, Texas

SWORN AND SUBSCRIBED TO BEFORE ME, on this the 13<sup>th</sup> day of March, 2002.



  
\_\_\_\_\_  
Notary Public, State of Texas

F:\Groups\Everyone\Jacqueline\Misc\affidavit 02-0347-JP.doc



# State Commission on Judicial Conduct

# COPY

## Officers

Michael L. O'Neal, Chair  
Kathleen H. Olivares, Vice-Chair  
Dee Coats, Secretary



Executive Director  
Margaret J. Reaves

## Members

L. Scott Mann  
Keith Baker  
Martin Chiu-minatto, Jr.  
Gilbert M. Martinez  
James A. Hall  
Ronald D. Krist

March 14, 2002

CONFIDENTIAL

**CERTIFIED MAIL No. 7000 0600 0027 2944 9651**  
**RETURN RECEIPT REQUESTED**

Robert Provan  
Provan & Associates, P.C.  
401 W. 15<sup>th</sup> Street, Suite 875  
Austin TX 78701

Re: CJC Nos. 01-0486-JP

Dear Mr. Provan:

Enclosed is a follow-up letter that we ask you to review and forward to your client, which gives him notice that the Commission may recommend to the Supreme Court that he be suspended from office. This action is based on information provided to us from Kaufman County Judge James Wayne Gent, which forms the basis of the Commission's sworn complaint against your client in the above-referenced case.

In the course of its preliminary investigation into this issue, the Commission has decided to consider whether to recommend to the Supreme Court that it suspend your client from further judicial service pursuant to its authority under Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges promulgated by the Supreme Court of Texas by order dated May 21, 1992. Rule 15 provides that:

### Rule 15. SUSPENSION OF A JUDGE

(a) ...

(b) Upon the filing with the Commission of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and 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, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission (under Rule 6), may recommend to the Supreme Court the suspension of such person from office.

(c) When the Commission or the Supreme Court orders the suspension of a judge or justice, with or without pay, the appropriate city, county, and/or state officials shall be notified of such suspension by certified copy of such order.

The Commission hereby puts your client, Justice of the Peace M. Jackson Myers of Kaufman County, Texas, on notice that pursuant to the above cited Procedural Rule 15(b), the Commission may seek to recommend to the Texas Supreme Court that your client be immediately suspended from office, pending further action by the Commission on Judicial Conduct.

In compliance with Article 5, §1-a(6)A of the Texas Constitution and Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges, the Commission orders that your client appear before it on **Thursday, April 11, 2002 at 8:30 a.m.**, in the Commission's offices located in the William P. Clements, Jr. Building, 300 West 15<sup>th</sup> Street, Suite 415, Austin, Texas.

As you previously were informed, an appearance before the Commission is governed by Chapter 33, Section 33.022, of the Texas Government Code. While your client may not invite witnesses to testify, he may invite guests to observe the hearing. Your client may be asked to discuss any matter relating to the above-referenced case. Please have your client review his written responses and notify us of any changes. Your client is free to submit any written documents or court records that you or your client deem material, including any affidavits or sworn statements from witnesses. Any documents you or your client wish the Commission to consider must be received by this office no later than **3:00 p.m. on April 9, 2002.**

If your client is unable to attend this hearing, you must notify the Commission in writing no later than **April 3, 2002.** Your client's failure to attend or provide a good cause reason for his failure to attend could result in the Commission initiating a complaint against him for failure to cooperate. The date and time of the hearing are reserved to allow your client the opportunity to clarify his actions to the Commission and to allow the Commission the opportunity to more fully understand the facts and circumstances of the case. Such discussion may result in an early resolution of the issues. However, please be advised that your client's testimony will be under oath and may be used in subsequent proceedings. For security reasons, if your client desires to invite guests to the hearing, your appearance confirmation letter should identify those persons.

The hearing will take place during a regularly scheduled Commission meeting; therefore, it is the Commission's policy that no requests for a continuance of the hearing will be entertained.

Thank you for your time and consideration.

Sincerely,

**SIGNED**  
Margaret J. Reaves  
Executive Director

MJR/JH/et

# State Commission on Judicial Conduct

# COPY

## Officers

Michael L. O'Neal, Chair  
Kathleen H. Olivares, Vice-Chair  
Dee Coats, Secretary



Executive Director  
Margaret J. Reaves

## Members

L. Scott Mann  
Keith Baker  
Martin Chiuminatto, Jr.  
Gilbert M. Martinez  
James A. Hall  
Ronald D. Krist

March 14, 2002

**CONFIDENTIAL**

**CERTIFIED MAIL # 7000 0600 0027 2944 9651**

**RETURN RECEIPT REQUESTED**

Honorable M. Jackson Myers

Justice of the Peace, Pct. 2

Kaufman County

119 Brandon Lane

Forney TX 75126

THROUGH HIS ATTORNEY ROBERT PROVAN

Re: CJC 01-0486-JP

Dear Judge Myers:

Following our letter to you inviting you to appear before the Commission to provide testimony in the above-referenced case, we received the enclosed affidavit from Kaufman County Judge James Wayne Gent. Based on the information provided by the judge in his affidavit, please be advised that the Commission has decided to consider whether to recommend to the Supreme Court that it suspend you from further judicial service pursuant to its authority under Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges promulgated by the Supreme Court of Texas by order dated May 21, 1992. Rule 15 provides that:

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(b) When the Commission or the Supreme Court orders the suspension of a judge or justice, with or without pay, the appropriate city, county, and/or state officials shall be notified of such suspension by certified copy of such order.

The Commission hereby puts you, Justice of the Peace M. Jackson Myers of Kaufman County, Texas, on notice that pursuant to the above cited Procedural Rule 15(b), the Commission may seek to recommend to the Texas Supreme Court that you be immediately suspended from office, pending further action by the Commission on Judicial Conduct.

As you were previously informed in our correspondence to you dated March 11, 2002, in compliance with Article 5, §1-a(6)A of the Texas Constitution and Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges, the Commission orders that you appear before it on Thursday, April 11, 2002 at 8:30 a.m., in the Commission's offices located in the William P. Clements, Jr. Building, 300 West 15<sup>th</sup> Street, Suite 415, Austin, Texas.

An appearance before the Commission is governed by Chapter 33, Section 33.022, of the Texas Government Code. While you may not invite witnesses to testify, you may invite guests to observe the hearing. You may be asked to discuss any matter relating to the above-referenced case. Please review your written responses and notify us of any changes. You are free to submit any written documents or court records that you deem material, including any affidavits or sworn statements from witnesses. Any documents you wish the Commission to consider must be received by this office no later than 3:00 p.m. on April 9, 2002.

If you are unable to attend this hearing, you must notify the Commission in writing no later than April 3, 2002. Your failure to attend or provide a good cause reason for your failure to attend could result in the Commission initiating a complaint against you for failure to cooperate. The date and time of the hearing are reserved to allow you the opportunity to clarify your actions to the Commission and to allow the Commission the opportunity to more fully understand the facts and circumstances of the case. Such discussion may result in an early resolution of the issues. However, please be advised that your testimony will be under oath and may be used in subsequent proceedings. For security reasons, if you desire to invite guests to the hearing, your appearance confirmation letter should identify those persons. Of course, you have the right to be represented by an attorney.

The hearing will take place during a regularly scheduled Commission meeting; therefore, it is the Commission's policy that no requests for a continuance of the hearing will be entertained.

At the conclusion of the hearing, the Commission may vote to dismiss the matter, issue a private or public sanction against you, order that you obtain additional education, or initiate formal proceedings in order to recommend your removal and/or suspension from office. In some situations, the Commission may postpone its decision in order to obtain additional testimony or other evidence.

Thank you for your time and consideration.

Sincerely,

**SIGNED**  
Margaret J. Reaves  
Executive Director

MJR/JH/et  
Enclosure

**AFFIDAVIT OF  
JUDGE JAMES WAYNE GENT**

STATE OF TEXAS       §  
                                  §  
                                  §  
COUNTY OF KAUFMAN §

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"I am over the age of 18, have never been convicted of a felony and have personal knowledge of all facts stated herein.

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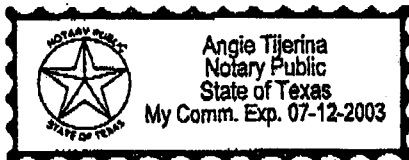
Although Judge Myers has been approached in the past about resigning his position, he refuses to do so because he does not want to lose his medical benefits.

The facts stated in this document are within my personal knowledge and are true and correct."

**FURTHER AFFIANT SAYETH NOT.**

*James Wayne Gent*  
Honorabile James Wayne Gent  
County Judge, Forney, Kaufman County, Texas

SWORN AND SUBSCRIBED TO BEFORE ME, on this the 13<sup>th</sup> day of March, 2002.



*Angie Tijerina*  
Notary Public, State of Texas

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

7000 0600 0027 2944 9651

01-0486-1A

Postage	00
Certified Fee	00
Return Receipt Fee (Endorsement Required)	00
Restricted Delivery Fee (Endorsement Required)	00
Total Postage & Fees	17

Stamp: MAR 5 2002  
 CAPITOL STA AUSTIN TX 78717  
 USPS

Postmark: MAR 14 2002

STATE COMMISSION ON JUDICIAL CONDUCT

Recipient's Name (Please Print Clearly) (to be completed by mailer)  
 Robert Provan  
 Street, Apt. No., or PO Box No.  
 401 W. 15th St, Ste 925  
 City, State, ZIP+4  
 Austin TX 78701

See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Robert Provan  
 Provan & Assoc.  
 401 W. 15th St, Ste 925  
 Austin TX 78701

850

01-0486-1A/ADD'L/INU/et

2. Article Number (Copy from service label)  
 7000 0600 0027 2944 9651

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery  
 LESLIE A. NANCE 3/15/02

C. Signature  
 [Signature]  Agent  Addressee

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

*Ken Owen & Associates*  
*Certified Shorthand Reporters*

BEFORE THE STATE COMMISSION  
ON JUDICIAL CONDUCT

CJC No. 01-0486-JP | RE: JUDGE MICHAEL MEYERS  
| JUSTICE OF THE PEACE, PRECINCT 2  
| FORNEY, KAUFMAN COUNTY, TEXAS

---

TRANSCRIPT OF PROCEEDINGS  
HELD ON THURSDAY; APRIL 11, 2002

---

REPORTED BY: HOLLY SCHULZ  
TEXAS CSR NO. 6097  
AUSTIN, TRAVIS COUNTY, TEXAS

BE IT REMEMBERED THAT ON the 11th day of April,  
2002, the following proceedings came on to be heard in  
the above-entitled matter and numbered cause before the  
State Commission on Judicial Conduct,  
Chairman Michael O'Neal presiding, held at the State  
Commission on Judicial Conduct, 300 West 14th Street,  
Austin, Texas, between the hours of 9:57 a.m. and  
10:28 p.m.

801 West Avenue  
Austin, Texas 78701-2169  
(512) 472-0880 • Fax 472-6030  
email: [kenowen@swbell.net](mailto:kenowen@swbell.net) • website: [www.kenowen.com](http://www.kenowen.com)

**COPY**

*"Serving lawyers for over 40 years"*

**EXHIBIT C**



APPEARANCES

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COMMISSION MEMBERS:

The Honorable Michael O'Neal, Chairman  
The Honorable Kathleen Olivares, Vice-Chair  
Ms Elizabeth (Dee) Coats, Secretary  
The Honorable Keith Baker  
The Honorable Martin J. Chiuminatto, Jr.  
Mr. James A. Hall  
Mr. L. Scott Mann  
Mr. Gilbert M. Martinez

FOR THE COMMISSION:

BY: Ms. Jacqueline Habersham  
COMMISSION COUNSEL  
STATE COMMISSION ON JUDICIAL CONDUCT  
P.O. Box 12265  
Austin, Texas 78711  
Telephone: (512) 463-5533  
Fax: (512) 463-0511

FOR JUDGE MEYERS:

BY: Mr. Robert J. Provan  
PROVAN & ASSOCIATES, P.C.  
401 West 15th Street, Suite 850  
Austin, Texas 78701  
Telephone: (512) 469-9383

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JUDGE MICHAEL MEYERS

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PROCEEDINGS

THURSDAY, APRIL 11, 2002

1  
2  
3 HON. O'NEAL: Good morning. Today is  
4 Thursday, April 11, 2002. My name is Michael O'Neal,  
5 and I am the Chair of the State Commission on Judicial  
6 Conduct. We are here on Cause No. CJC No. 01-0486-JP  
7 concerning Judge Michael Meyers, Justice of the Peace,  
8 Precinct 2, Forney, Kaufman, County, Texas.

9 I will ask the members of the Commission  
10 to introduce themselves for the record.

11 HON. CHIUMINATTO: Martin Chiuminatto.

12 HON. HALL: Jim Hall.

13 HON. MANN: Scott Mann.

14 HON. OLIVARES: Kathleen Olivares.

15 HON. COATS: Dee Coats.

16 HON. MARTINEZ: Gilbert Martinez.

17 HON. BAKER: Keith Baker.

18 HON. O'NEAL: Judge Meyers, would you  
19 please identify yourself for the record.

20 JUDGE MEYERS: (No verbal response.)

21 MR. PROVAN: He's not able to talk right  
22 now. This IS judge Jackson Meyers.

23 HON. O'NEAL: Thank you very much,  
24 counsel.

25 You have the right to be represented by

1 counsel, and I note that you do have counsel present  
2 today.

3 Counsel, would you please state your  
4 name for the record.

5 MR. PROVAN: Yes, thank you. I'm  
6 Robert J. Provan, P-R-O-V-A-N.

7 HON. O'NEAL: Thank you.

8 You may consult with your client before  
9 he answers a question or makes a statement. You may  
10 ask questions of your client if I wish. You are  
11 cautioned not to present testimony, but you may make a  
12 short closing statement at the conclusion of the  
13 hearing.

14 MR. PROVAN: Thank you.

15 HON. O'NEAL: Is anyone present at this  
16 hearing at Judge Meyers' invitation, Counsel?

17 MR. PROVAN: Yes. Mr. Chairman, in  
18 addition to myself, I have my associate, Shirley Madrid  
19 (phonetic), who is also a registered nurse, and  
20 Judge Meyers' mother, Sonya Meyers.

21 HON. O'NEAL: Thank you.

22 MR. PROVAN: May I make a brief  
23 statement Mr. Chairman?

24 HON. O'NEAL: At the conclusion of this  
25 predicate, yes.

1 MR. PROVAN: Well, I just wanted to  
2 advise the Commission that my client has a medical  
3 condition known as Tourette's Syndrome. It can cause  
4 seizures, especially when he's feeling stress, and he  
5 can lose the ability to speak or to speak clearly.

6 He's on medication of an experimental  
7 type, detrabenzyne (phonetic) to help control his  
8 symptoms, but this is somewhat stressful for him, so  
9 his symptoms are becoming more apparent.

10 If he cannot answer the questions, I  
11 will attempt to do so for him with your permission.

12 HON. O'NEAL: Counsel, I think that that  
13 would be appropriate in order to -- assuming, of  
14 course, that this has been thoroughly discussed and you  
15 have your client's authority to do so.

16 MR. PROVAN: Yes, sir.

17 HON. O'NEAL: Judge Meyers and Counsel,  
18 you are aware that the Commission is inquiring into  
19 information received from the Kaufman County Auditor,  
20 Linda Spencer, regarding your inability to fulfill your  
21 duties as Justice of the Peace of Kaufman County due to  
22 a medical disability.

23 We are also inquiring into allegations  
24 that you were enrolled as a student at Southern  
25 Methodist University during the time of your

1 disability.

2                   You were notified by letter of  
3 November 2nd, 2001 of our concerns, and you furnished a  
4 written response on December 1, 2001.

5                   You have chosen to keep this meeting  
6 confidential. Only the Commission, its staff, and any  
7 individuals you have invited are present.

8                   This proceeding is being recorded, and  
9 your testimony is will be under oath. The recording of  
10 this proceeding and all documents, statements, and  
11 evidence considered by the Commission will become  
12 public, if any public sanction is issued. You are  
13 entitled to a copy of the reporter's record of this  
14 hearing at your own expense.

15                   Judge Meyers, you have the right to  
16 submit any written documentation, witness statements,  
17 affidavits, or other further information relevant to  
18 the cause for the Commission's consideration. You will  
19 be advised in writing of the Commission's decision.

20                   A staff attorney assigned to this matter  
21 will ask questions. After your response, Commission  
22 members my ask additional questions. You will be given  
23 an opportunity to respond. Your attorney may also ask  
24 you questions after Commission members have completed  
25 their questioning, and you and/or your attorney may

1 also make a brief closing statement.

2 Are there any questions regarding what  
3 I've read?

4 MR. PROVAN: No, sir.

5 HON. O'NEAL: At this time will you  
6 please raise your right hand to take the oath.

7 (Judge Meyers sworn.)

8 HON. O'NEAL: Counsel, are you an  
9 officer of the court, and as such I will assume that no  
10 oath is necessary to be administered, that any answers  
11 that you will give will be the truth.

12 MR. PROVAN: Thank you.

13 HON. O'NEAL: At this time I will turn  
14 the matter over to attorney Jacqueline Habersham.

15 MS. HABERSHAM: Thank you, Chairman.

16 Judge Meyers, Mr. Provan, thank you for  
17 being here today. You and I previously met, and you  
18 know that I'm Jacqueline Habersham, Commission Counsel  
19 in this matter.

20 JUDGE MICHAEL MEYERS,  
21 having been previously sworn, testified as follows:

22 EXAMINATION

23 BY MS. HABERSHAM:

24 Q. We originally wrote Judge Meyers on November  
25 the 2nd of 2001 and asked you to respond to certain

1 written questions regarding the complaint and the  
2 information that we received from Linda Spencer. And  
3 we received those written responses on December 31st of  
4 2001.

5 We're going to adopt those answers to  
6 those questions as a part of the sworn statement here  
7 today. Are those answers to those questions still  
8 correct, or are there any changes that you would like  
9 to make at this time?

10 MR. PROVAN: As far as I know they are  
11 still correct.

12 Q. They have still correct, okay.

13 If there are no corrections, then we'll  
14 just adopt those.

15 HON. O'NEAL: Counsel, we do understand  
16 the condition that your client is under, but we will  
17 ask that you allow the client to -- if he can, answer  
18 the questions, and only in the instance that he cannot,  
19 that you respond.

20 MR. PROVAN: Yes.

21 HON. O'NEAL: You may proceed.

22 Q. (BY MS. HABERSHAM) Judge Meyers, when did you  
23 begin serving as a Judge?

24 A. January 1st, 1999.

25 Q. Okay. And you're now on medical leave; is



1 that correct?

2 A. Uh-huh.

3 Q. And how long have you been away from the  
4 bench?

5 A. Since January 9, 2001 or --

6 Q. 2001?

7 A. I'm not sure. It's been a year and three  
8 months.

9 Q. Okay. And how long have you been suffering  
10 from your medical disability?

11 A. I was suffering before I left office. I was  
12 going to the neurology department at UT Southwestern in  
13 Dallas, Texas at the neurological department.  
14 Dr. O'Suilleabhain was my doctor. I was on a number of  
15 different neurological medications.

16 Q. Let me ask you this, did you suffer any  
17 symptoms before you assumed the bench?

18 A. No.

19 Q. Could you briefly describe the progression of  
20 your disability -- let me back up. How did this  
21 disability come about?

22 A. Ma'am, they don't know what causes Tourette's  
23 Syndrome. They feel like it was from due to a staff  
24 infection that I had when I was 15 years old, and I had  
25 to take what was called Vancomycin, and I was in the

1 hospital for months. And they said that it may cause  
2 some type of movement disorder later on, but it was in  
3 a life or death, I had to take the medicine.

4 Q. Okay. So sometime after you had assumed the  
5 bench did the symptoms become progressed, more worse?

6 A. Yes, ma'am.

7 Q. Do you know how long into your term of  
8 serving as judge those symptoms started becoming just  
9 too bearable for you to do any more?

10 A. I just knew that I couldn't serve the people  
11 like I was supposed to.

12 Q. Okay. Since the time that you left the  
13 bench -- and you said it was maybe around January 9th  
14 of 2001; is that correct?

15 A. Uh-huh.

16 Q. Since that time, have you performed any  
17 weddings?

18 A. No.

19 Q. No weddings?

20 A. No.

21 Q. You've not done any inquests or anything?

22 A. No.

23 Q. And you are currently on prescription  
24 medication?

25 A. Yes, ma'am. Well, they don't sell it here.

1 Q. Okay. And that's the --

2 A. You go to Baylor of Houston movements and  
3 Parkinson's disorder and it's only sold in the United  
4 Kingdom, but they can sell it through the doctor's  
5 authorization. So I can't buy it with the insurance  
6 that I have, I just have to buy it on my own.

7 Q. Okay. Have your doctors given you their  
8 opinion as to whether or not you're able to fulfill  
9 your judicial duties?

10 A. They haven't. They have not released me.  
11 They will not release me until they know what the side  
12 effects of this scientific -- I mean this research drug  
13 is.

14 Q. But currently you cannot perform any judicial  
15 duties; is that correct?

16 A. I wouldn't want me to be someone's judge.

17 Q. Okay. I understand. Are you currently still  
18 on the Kaufman County payroll?

19 A. Uh-huh.

20 Q. And you do still receive benefits from  
21 Kaufman County?

22 A. Yes, ma'am.

23 Q. Have any county officials in Kaufman County  
24 ever approached you about possibly resigning from your  
25 position?

1 A. Uh-huh.

2 Q. And what was your response to that?

3 A. That's when I contacted Mr. Provan.

4 Q. Okay. Regarding your -- the resignation?

5 A. Uh-huh. I needed the insurance. I needed --  
6 I couldn't -- this is tough.

7 Q. Have you on your own ever considered  
8 resigning from your position?

9 A. I don't like to get paid for something that I  
10 don't do.

11 MS. HABERSHAM: I have no further  
12 questions.

13 HON. O'NEAL: Members of the Commission,  
14 Judge Chiuminatto?

15 HON. CHIUMINATTO: I have no questions.

16 HON. HALL: None.

17 HON. O'NEAL: Judge Baker?

18 HON. BAKER: No, I don't have any  
19 questions.

20 HON. MARTINEZ: No questions.

21 HON. OLIVARES: Mr. Provan, you can  
22 proffer this information. Do you know what your  
23 client's occupation was before he came on the bench?

24 MR. PROVAN: No, I don't.

25 HON. OLIVARES: Okay. Will he be able

1 to tell us?

2 JUDGE MEYERS: Student.

3 MR. PROVAN: He was a student.

4 HON. OLIVARES: Okay. In college, I'm  
5 assuming? He was a student in college?

6 MR. PROVAN: Yes.

7 HON. OLIVARES: Thank you.

8 HON. O'NEAL: Any further questions?

9 HON. HALL: Mr. Chairman, I do.

10 HON. O'NEAL: Yes, go ahead.

11 HON. HALL: And maybe Mr. Provan can  
12 offer us a response. I just wanted to know is there  
13 any way that the Judge could take a leave of absence  
14 and maintain his medical insurance; do you know?

15 MR. PROVAN: I suppose it's possible.  
16 We have the Kaufman County personnel manual, and it  
17 does allow, as required by law, family and medical  
18 leave, which would be 12 weeks, but that's, of course,  
19 unpaid. He wouldn't draw a salary. I'm not sure how  
20 it would affect benefits, but it might be possible.

21 I have -- and I will say this in my  
22 closing statement. I'm contemplating contacting  
23 Kaufman County to try to make arrangements with them  
24 for something that's, you know, would serve the  
25 interests of both parties.

1 HON. HALL: Thank you.

2 HON. O'NEAL: Judge Olivares?

3 MR. PROVAN: Excuse me one moment.

4 (Attorney/client discussion.)

5 MR. PROVAN: Ms. Meyers informs me that  
6 the Kaufman County Judge informed Judge Meyers that an  
7 elected official cannot take a leave of absence from an  
8 elected office, but that he could just not show up to  
9 perform his duties. That's what he was told by the  
10 county judge.

11 HON. OLIVARES: Mr. Provan, in your  
12 effort to investigate the alternatives other than the  
13 county coverage, have you found any other program that  
14 might be available: Social Security, Medicaid,  
15 anything like that.

16 MR. PROVAN: I represent a lot of people  
17 with disabilities. I obviously have one myself. And I  
18 represent a lot of physicians that treat people with  
19 disabilities, also.

20 There isn't much in the way of health  
21 care for a young person who has a permanent or total  
22 disability. If you can prove to the Social Security  
23 Administration that you're not capable of performing  
24 any job, then you may be classified as a person with a  
25 disability for Medicare benefits, and then you have the

1 right to join either traditional Medicare or Medicare  
2 Plus Choice, which is the managed care product under  
3 Medicare. And you can enroll in Medicare HMO.

4 Of course, Judge Meyers would be  
5 entitled to the COBRA coverage. COBRA coverage usually  
6 extends your health care for 18 months. Again, if you  
7 can be classified as a person with a disability, that  
8 can be extended to 29 months. The catch there is that  
9 you have to pay the full premium, both your part and  
10 the employer's part, during those months.

11 Other than that, the only thing I know  
12 of that might be available is the State of Texas Risk  
13 Pool, but the premiums are quite high and the risk pool  
14 has the authority to exclude certain types of medical  
15 conditions. I'm not sure if a person with Tourette's  
16 would be eligible under the risk pool.

17 But that's pretty much your choices:  
18 Medicare, COBRA coverage for a period of time, and the  
19 risk pool as a possibility.

20 HON. OLIVARES: Thank you, sir.

21 HON. HALL: How old is the Judge?

22 JUDGE MEYERS: 27.

23 MR. PROVAN: He's 27.

24 HON. HALL: Thank you.

25 HON. O'NEAL: Any further questions from

1 the Commission?

2 Counsel, at this time --

3 MR. PROVAN: Thank you, Mr. Chairman.

4 Ladies and gentlemen, Judge Meyers is a  
5 person with a disability. His disability, except when  
6 his symptoms manifest themselves, is invisible; unlike  
7 mine, which is quite visible. But he is as much a  
8 person with a disability as I am.

9 He has Tourette's Syndrome and I  
10 believe -- (attorney/client discussion) -- and he also  
11 has epilepsy. And it's a combination of these two  
12 conditions, the co-morbidity that manifest itself in  
13 Judge Meyers' with sometimes extreme seizures. They  
14 are not always predicable; they are not always subject  
15 to medical control. Medication can ameliorate those  
16 symptoms to some extent, but not eliminate them.

17 Judge Meyers is a young man. He's only  
18 27. His condition came on him quite suddenly. I have  
19 read documents from his doctors that informed me that  
20 he has one of the most severe cases of Tourette's they  
21 have ever encountered in their medical practice. It  
22 makes him -- he's not capable, he feels, in performing  
23 as a judicial officer.

24 Unfortunately, other public officials in  
25 Kaufman County did not -- either they did not



1 understand Judge Meyers' condition and were ignorant  
2 and acted out of ignorance, or they just launched into  
3 vicious political attacks upon him because of his  
4 condition. He was accused of being drunk on the bench.  
5 He was accused of using drugs illicitly because his  
6 conduct was somewhat odd and his behavior -- his speech  
7 would become slurred. He would become lethargic.

8 So either it was they were acting out of  
9 ignorance or they were acting out of political motives,  
10 but he was subject to a lot of vicious political  
11 attacks.

12 He's been subject to one charge after  
13 another before this Commission. His only wrongdoing is  
14 that he's ill. He was attempting to fulfill his  
15 responsibilities to the best of his ability.

16 Now, every person with a disability is  
17 different, because even if you have the same  
18 disability, your disabilities may differ.

19 Judge Meyers is able to, some of the  
20 time to attend school, because colleges and  
21 universities can provide you with accommodations that  
22 make it possible for you to attend school and continue  
23 your education. But he doesn't feel he's capable of  
24 setting on the bench. You can imagine the reaction of  
25 litigants to a judge that is suffering these symptoms

1 right now.

2           Stress adds to his problem, which is one  
3 of the reasons I've been worried about this hearing,  
4 because I knew it would be stressful for him.

5           But he took leave of absence. He just  
6 quit performing. He's been drawing his salary, and  
7 he's been drawing his benefits. His main interest is  
8 his need for health care, because obviously he's a  
9 person in need of health care.

10           He's been accused of doing something  
11 wrong because he was attempting to go to graduate  
12 school at the same time he was on leave from the bench.

13           But, you know, I can be a lawyer; I can  
14 stand here in front of you today and make a legal  
15 argument, but I cannot walk from here to my office  
16 across the street without extreme difficulty.

17           He can go to school with reasonable  
18 accommodations and pursue his education and try to  
19 better his future, but he cannot, in good conscience,  
20 sit on the bench.

21           He did not do anything wrong. I would  
22 like to -- I'm going to send a letter to Kaufman County  
23 and remind them that they are subject to Title 2 of the  
24 Americans with Disabilities Act and to discriminate  
25 against a person based on false assumptions or

1 stereotypes or ignorance is unlawful under Title 2.

2           Hassall (phonetic) versus the California  
3 Board of Medical Examiners decided just a couple of  
4 months ago by the 9th Circuit makes it clear that  
5 Title 2 still is viable as it applied to all State  
6 agencies and that those State agencies should make  
7 reasonable accommodations.

8           Now, under Title 1, the Employment  
9 Provisions, it's true you should be able to perform the  
10 essential functions of your job, and if you can't,  
11 you're not a covered person as far as employment.

12           I don't know what's going to happen  
13 about the employment of the Judge as a public official  
14 in Kaufman County, but I do know this: That the  
15 charges that he's involved in some kind of misconduct  
16 because he was attempting to go to school and not being  
17 able to sit on the bench are ill-founded and probably a  
18 violation of Title 2.

19           So we ask that this Commission recognize  
20 his difficulties, his courage in trying to go to school  
21 and do something with himself rather than sit at home  
22 and feel sorry for himself and recognize that it is his  
23 disability that put him in this situation and not any  
24 desire to just get a free ride at the county's expense  
25 and not anything constituting misconduct as a judicial

1 officer. Thank you.

2 HON. O'NEAL: Counsel, I do have a  
3 question that I think is probably one of the big  
4 concerns we have here is that the people of Kaufman  
5 County wanted a judge to sit in that precinct, and  
6 that's what they voted for, and that's what they're  
7 paying for.

8 And yet it appears that the Judge is  
9 unable to do that for which he was elected by the  
10 people who elected him. Can you respond to that  
11 please, sir?

12 MR. PROVAN: That statement is true, and  
13 I think it would be beneficial if the elected officials  
14 at Kaufman County contacted me and we -- and through  
15 either a mediation or negotiation we attempted to  
16 reconcile our differing interests in this matter rather  
17 than file charges of judicial misconduct against my  
18 client.

19 HON. O'NEAL: Judge Chiuminatto, you had  
20 a question?

21 HON. CHIUMINATTO: Mr. Provan, I may  
22 have missed this in the materials or in the responses  
23 here, but at the risk of not overlooking the obvious,  
24 if he came on the bench in 1999, that would indicate to  
25 me that his first term would expire at the end of this

1 year; is that correct?

2 MR. PROVAN: That's correct.

3 HON. CHIUMINATTO: Is he running again?

4 MR. PROVAN: No. No, he recognizes his  
5 term is up in December.

6 HON. CHIUMINATTO: I see. Thank you.

7 MR. PROVAN: And, Mr. Chairman, I  
8 understand that this constitutes an expense to the  
9 county and that's unfortunate in that they have to hire  
10 somebody to perform the duties that he can't perform  
11 himself.

12 But in adopting the Americans with  
13 Disabilities Act, our country recognizes that in order  
14 to mainstream and integrate people with disabilities  
15 into our society and our economy, there would be costs  
16 involved. As long as those costs were reasonable and  
17 not excessive, the law places a burden on employers to  
18 accommodate people with disabilities. It might be a  
19 special computer screen, or a desk that's set a little  
20 bit lower, or a water fountain adjusted, or it could be  
21 a shifting of duties performed.

22 I think if the tests were made on  
23 employment, Judge Meyers wouldn't make the grade to be  
24 covered as a person, a qualified person with a  
25 disability under Title 1 of the ADA, because he cannot

1 perform the essential functions of the job, with or  
2 without a reasonable accommodation.

3 But I would hope that the county would  
4 work with us in trying to see if there's a way that he  
5 can retain his health care benefits through the end of  
6 his term and then seek COBRA coverage after that.

7 And we are willing to negotiate with the  
8 county regarding his salary and other matters.

9 I just feel it's unfortunate that they  
10 have chosen to file -- or some people have chosen to  
11 file complaints of misconduct with this Commission  
12 because of his condition. And I think it's -- I think  
13 on behalf of some of the people, from what I've  
14 learned, it's politically motivated. On behalf of some  
15 other people, it may be that they simply don't  
16 understand Tourette's Syndrome or how disabling it can  
17 be.

18 HON. O'NEAL: Thank you, Counsel.

19 MR. PROVAN: You're welcome.

20 HON. O'NEAL: The Commission will  
21 deliberate the questions you have raised, as well as  
22 the matters set forth from the complaint.

23 Judge Meyers, you will be notified in  
24 writing of the Commission's decision. I want to thank  
25 both of you for being here. I want to assure you that

1 we do understand that this is an extremely difficult  
2 and unfortunate situation for the Judge. I thank you  
3 very much for coming.

4 We do have another matter. At this time  
5 we are going to close this Cause No.  
6 CJC No. 01-0486-JP.

7 (Proceedings recessed at 10:28 a.m.)  
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C E R T I F I C A T E

STATE OF TEXAS |

COUNTY OF TRAVIS |

I, HOLLY SCHULZ, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above-captioned matter came on for hearing before the STATE COMMISSION ON JUDICIAL CONDUCT, The Honorable Michael O'Neal, Commission Chairman, on the 11th day of April, 2002, as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of said hearing were reported by me, accurately reduced to typewriting under my supervision and control and that the foregoing pages are a full, true, and correct transcription of said proceedings.

I further certify that I am neither attorney or counsel for, related to, nor employed by any parties to the action in which this testimony was taken and, further, I am not a relative or employee of any counsel employed by the parties hereto or financially interested in the action.

Certified to by me this, the 23rd day of April, 2002.

*Holly Schulz*

Holly Schulz, CSR, RPR  
 Texas CSR #6097  
 Expiration Date: 12/31/03  
 Ken Owen & Associates  
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 Austin, Texas 78701  
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**BEFORE THE  
STATE COMMISSION ON JUDICIAL CONDUCT**

---

**Inquiry Concerning  
CJC No. 01-0486-JP**

---

**COMMISSION'S RECOMMENDATION OF SUSPENSION**

On the 11th day of April, 2002, came on to be heard the complaint of Kaufman County Auditor, Linda Spencer, and the Affidavit of Kaufman County Judge James Wayne Gent (the "Sworn Complaint") requesting that the State Commission on Judicial Conduct ("Commission") recommend the immediate suspension of Judge Micheal Jackson Myers, Justice of the Peace, Precinct 2, Forney, Kaufman County, Texas ("Respondent").

After considering the Sworn Complaint, the testimony of Respondent, and the argument of counsel, the Commission concluded that Respondent has engaged in willful and persistent conduct that is clearly inconsistent with the proper performance of his duties and which casts public discredit on the judiciary and on the administration of justice in violation of Article 5, Section 1-a(6)A of the Texas Constitution.

**WHEREFORE**, pursuant to Article 5, §1-a(6)A of the Texas Constitution and Rule 15b of the Procedural Rules for the Removal or Retirement of Judges, the Commission recommends that the Texas Supreme Court order the immediate suspension, without pay, of Judge Micheal Jackson Myers from his office as Justice of the Peace, Precinct 2, Forney, Kaufman County, Texas, pending final disposition of the charges against him.

**SIGNED:** April 23, 2002.

A handwritten signature in black ink, appearing to read "Michael L. O'Neal", written over a horizontal line.

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

**EXHIBIT D**