

# A way to get a new judge

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Some people just won't take no for an answer.

Three years ago I wrote about some strange rulings by Harris County probate Judge Michael Wood during a trial involving millionaire businessman **Robert Alpert**, formerly of Houston.

The typical nasty dispute in probate court is among family members squabbling over their shares of the inheritance.

This one is different. For one thing, nobody died. Alpert set up trusts for his two sons, who were then minors.

The suit isn't among family members. It was filed nine years ago by the trustee, **Mark Riley**, a lawyer who had worked for Alpert but was fired. Riley accused Alpert of interfering with his work as an independent trustee and of improperly using the trusts as a tax dodge.

## Lawyers \$2 million, sons zip

The suit landed in Wood's court, and before long, Wood and Alpert were at odds. Alpert accused Wood of using the suit to enrich his various lawyers and others paid out of the trusts in connection with the lawsuit, including members of the law firm Wood had been part of before taking the bench many years ago.

Alpert's attorney **Bobbie Bayless** says records show that Wood's old firm, Crain Caton & James, has been paid more than \$1.1 million from the trust to represent Riley in his suit against Alpert.

When you add in more lawyers, an auditor, a receiver, an accounting firm and others, Riley has paid out more than \$2 million from the trust with Wood's approval.

Meanwhile, said Bayless, the sons haven't received anything from the trust since 2002, though the trust was intended to pay for their college expenses during that time.

## Judge's wife takes notes

Twice, Alpert tried to get Wood recused from the case. Both times under Texas law, the state's chief probate judge assigned other Houston probate judges to hear the motion. Both times, Alpert lost.

Harris County has four probate judges, who respect each other's territory.

But Alpert has become a man with a mission. At one level it is to beat Wood. At another, he says, it is to improve the probate system for all Texans.

So, Alpert persuaded Sen. **Jeff Wentworth**, R-San Antonio, who chairs the **Senate Jurisprudence Committee**, to carry legislation taking recusal motions out of the clubby hands of other local probate judges.

Wentworth recalled that Wood testified during a committee hearing on the matter, opposing any changes in the current law.

"Then he made a big deal out of leaving the room while others testified" so that he wouldn't be influenced by their criticisms if they should appear before him, recalled Wentworth.

"But his wife (Harris County District Judge **Sharolyn Wood**) stayed in the room and took notes, so you knew she would tell him everything the witnesses said about him," said Wentworth.

Wentworth pushed through a bill with two important changes. It requires that the judge who hears the recusal motion be the regional administrative judge, as is the case for other judges, instead of the presiding probate judge. And it provides that a probate judge cannot hear a recusal motion regarding another probate judge in the same county.

Two weeks ago Alpert tried a third time to get Wood recused. This time it was in front of retired County Court-at-Law Judge **Lisa Burkhalter** of Lufkin.

This time he won.

Burkhalter apparently was especially swayed by the testimony of Cynthia Szepe, a juror in the trial I wrote about three years ago.

Szepe said Wood came into the jury room after the verdict was rendered, finding against Alpert on a number of questions (which are under appeal) but also finding that Riley had breached his fiduciary duty to the sons.

She said Wood "made somewhat hostile remarks to us indicating his anger at some of our answers and his opinion that our result was incorrect, proceeded to tell us his opinions about Mr. Alpert, and then left just as abruptly as he had come in."

She said Wood showed "his especially strong dislike of Mr. Alpert," calling him "just a rich guy who would do anything to win."

She said she was "shocked to learn that the judge not only overruled our findings that Mr. Riley has breached his fiduciary duties, but even reappointed Mr. Riley trustee of the **Alpert Trusts**. This is particularly disturbing since the evidence was clear on the fact that Mr. Riley put his own interests above the interests of the trusts and completely ignored the beneficiaries of the trusts."

Wood did not return a call Tuesday seeking his comments on the recusal.

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