



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC Nos. 09-0806-CO & 09-0849-CO

PUBLIC ADMONITION

**HONORABLE JOHN PHILLIP FITZGERALD
COUNTY JUDGE
LIBERTY, LIBERTY COUNTY, TEXAS**

During its meeting on December 8-10 2010, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable John Phillip Fitzgerald, County Judge in Liberty, Liberty County, Texas. Judge Fitzgerald was advised by letter of the Commission's concerns and provided a written response. Judge Fitzgerald appeared with counsel before the Commission on June 16, 2010, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

BACKGROUND INFORMATION

In 2008, the Commission received and investigated several complaints filed by confidential sources that alleged numerous incidents of misconduct against Judge Fitzgerald. Many of the matters alleged in the complaints had received extensive local media attention. After a full and thorough investigation, the Commission was unable to substantiate certain claims and, therefore, voted to dismiss those complaints. However, included in the above-referenced complaints were allegations that Judge Fitzgerald had (a) improperly dismissed criminal cases pending in the County Court-at-Law court, including a DWI charge against the judge's close personal friend; and (b) improperly acted as a Trustee of a Trust and as the fiduciary/personal representative of that same close personal friend after becoming the Liberty County Judge. Both of these issues are addressed more fully below:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable John Phillip Fitzgerald was County Judge in Liberty, Liberty County, Texas.¹

The Vickery Trust

2. Judge Fitzgerald and Glenn W. Vickery ("Vickery") have been close friends for many years. Vickery has a daughter, Jessica, for whose benefit he created a trust in 1987.
3. On or about August 28, 2001, while a Justice of the Peace, Judge Fitzgerald was appointed Trustee of the Jessica Vickery Irrevocable Trust (the "Vickery Trust").
4. Under an exception to the Texas Code of Judicial Conduct², a justice of the peace may ethically serve in the capacity of a trustee.
5. Although prohibited by Canon 4E(1) of the Texas Code of Judicial Conduct, Judge Fitzgerald continued serving as Trustee after being elected Liberty County Judge.
6. On or about April 28, 2009, Jessica and her mother, Helen Green, filed a lawsuit in the 75th District Court seeking to remove Judge Fitzgerald as Trustee of the Vickery Trust, claiming that his service violated the Texas Code of Judicial Conduct and that he had "materially violat[ed] and attempt[ed] to violate the terms of the Trust."
7. On or about November 24, 2009, after a non-jury trial, Judge Rusty Hight of the 75th District Court signed a final judgment removing Judge Fitzgerald as Trustee of the Vickery Trust.³
8. In addition to serving as Trustee of the Vickery Trust, Judge Fitzgerald was also appointed to act as a fiduciary under a Medical Power of Attorney executed by, and on behalf of, Vickery, in 2005.
9. Judge Fitzgerald justified his continued service as a fiduciary on behalf of Glenn Vickery and Jessica Vickery by claiming he enjoyed a "close familial relationship" with members of the Vickery Family.

¹ Judge Fitzgerald served as a Justice of the Peace in Hardin, Liberty County, Texas, for twenty years prior to becoming the Liberty County Judge in 2007.

² Canon 6C(1)(b) of the Texas Code of Judicial Conduct expressly exempts Justices of the Peace from compliance with Canon 4E of the Texas Code of Judicial Conduct.

³ The judgment was subsequently set aside as a result of a settlement agreement between the parties.

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10. In support of this claim, Judge Fitzgerald testified that he and Glenn Vickery became friends in the mid 70's, and that the two have lived in the same small community for more than 30 years.
11. Judge Fitzgerald went on to describe how they both supported their community, served together on the local school board, and that their children at one time attended school together. Judge Fitzgerald stated that he thought of Jessica Vickery as a "daughter."
12. Judge Fitzgerald's construction company was also hired to perform remediation work on Vickery's ranch following Hurricane Rita.

The DWI Dismissal

13. On or about December 31, 2008, Judge Fitzgerald signed an order dismissing a charge of Driving While Intoxicated against his close personal friend, Vickery.
14. At the time of the dismissal, Vickery's case had been pending before the County Court at Law. The judge of that court had not been advised of the dismissal, nor had he given permission for Judge Fitzgerald to handle any cases pending in the County Court at Law.
15. Judge Fitzgerald testified that on the morning of December 31, 2008, he was approached by the County Attorney's Office with a request by Jack Hartel ("Hartel"), the outgoing County Attorney, to dismiss five (5) cases that were pending in the County Court at Law.
16. Having determined that there was some basis for dismissal, a prosecutor prepared the dismissal paperwork for the five (5) cases and presented dismissal orders to Judge Fitzgerald for his signature. Among the five (5) cases presented was the DWI case involving Judge Fitzgerald's close personal friend, Vickery.
17. Judge Fitzgerald signed the orders.
18. Upon learning of the dismissed cases, the County Court at Law judge rescinded Judge Fitzgerald's orders, reinstated the cases, and asked the presiding administrative judge to appoint a visiting judge to hear those cases.
19. According to one witness, Judge Fitzgerald never obtained the consent of the County Court at Law judge to handle, or sign any orders relating to, these cases.
20. The December 31, 2008 dismissal of Vickery's DWI case received local media attention.

RELEVANT STANDARDS

4. Canon 4E(1) of the Texas Code of Judicial Conduct states, in pertinent part: "A judge shall not serve as executor, administrator, or other personal representative, trustee guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties."
5. Article V, §1-a(6)A of the Texas Constitution states that a judge may be disciplined or removed from office for willful or persistent conduct that casts public discredit upon the judiciary or administration of justice.

CONCLUSION

The Commission concludes from the facts and evidence before it that Judge Fitzgerald acted in violation of the Texas Code of Judicial Conduct when he continued to serve as Trustee of the Vickery Trust, and as a fiduciary or personal representative of Glenn Vickery, after becoming the Liberty County Judge. Judge Fitzgerald testified that he and members of the Vickery Family had a “close familial relationship.” Specifically, the judge described how he and Glenn Vickery had been long-time, close friends, and that the judge thought of Jessica Vickery as a “daughter.” However, the Commission finds that maintaining a close friendship and having paternal feelings toward someone else’s child, standing alone, do not satisfy the “close familial relationship” standard articulated by the Canons. The Commission concludes that Judge Fitzgerald’s failure to voluntarily remove himself as Trustee, even after legal action was taken against him, constituted a willful and/or persistent violation of Canon 4E(1) of the Texas Code of Judicial Conduct.

The Commission also concludes that Judge Fitzgerald cast public discredit upon the integrity and impartiality of the judiciary and the proper administration of justice when he dismissed the DWI case pending against Vickery, his close personal friend. Judge Fitzgerald’s actions in this regard constituted a willful violation of Article V, §1-a(6)A of the Texas Constitution.

In condemnation of the conduct described above that violated Canon 4E(1) 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 ADMONITION** to the Honorable John Phillip Fitzgerald, County Judge in Liberty, Liberty County, Texas.

Pursuant to the authority contained in Article V, § 1-a(8) of the Texas Constitution, it is ordered that the conduct described above be made the subject of a **PUBLIC ADMONITION** by the State Commission on Judicial Conduct.

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

Issued this **16th** day of **December**, 2010.

ORIGINAL SIGNED BY

Honorable Jorge C. Rangel, Chair
State Commission on Judicial Conduct