



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC Nos. 03-1016-DI AND 04-1119-DI

PUBLIC WARNING

**HONORABLE BRITT PLUNK
356TH DISTRICT COURT
KOUNTZE, HARDIN COUNTY, TEXAS**

During its meeting on May 11, 2006, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Britt Plunk, Judge of the 356th District Court in Kountze, Hardin County, Texas. Judge Plunk was advised by letter of the Commission's concerns and provided a written response. Judge Plunk appeared with counsel before the Commission on April 21, 2006, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Britt Plunk was Judge of the 356th District Court in Kountze, Hardin County, Texas.

CJC No. 03-1016-DI

2. On or about Tuesday, August 5, 2003, Kimberly Loftin ("Kimberly") died in Hardin County after a traffic accident. That afternoon, Victoria Kellum ("Victoria"), Kimberly's seven (7) year-old daughter, who had been living with Kimberly and her husband, Sam Loftin ("Loftin"), the child's stepfather, was taken to Christopher Kellum ("Kellum"), her biological father, who informed her that her mother had died.
3. In the days immediately following the death, Kellum made attempts to contact Loftin to obtain information about funeral arrangements. Through family members, Kellum advised Loftin that he intended to bring Victoria to her

mother's funeral, but did not want his daughter to attend the wake or visitation, which he thought might be too traumatic for the child.

4. On the evening of Thursday, August 7, 2003, Kellum and his wife made arrangements to have Victoria's hair done at a local salon in preparation for her mother's funeral scheduled for 10 a.m. the following morning.
5. Believing Kellum was not going to allow Victoria to attend the funeral, Loftin retained the legal services of Rebecca Walton ("Walton"), a local family law attorney and Assistant Hardin County Attorney, to gain custody of the child. Walton is also the daughter of Judge Plunk's court coordinator, Rita Peterson ("Peterson").
6. On the afternoon of August 7, 2003, Walton contacted Judge Plunk to determine his availability to sign an order granting emergency relief as to a child. Judge Plunk advised Walton that he would be completing some paperwork at the courthouse later that evening and would be available at that time if she still needed him.
7. At approximately 7 p.m. on August 7, 2003, Judge Plunk met with Walton in his courtroom at which time the attorney presented him with an Original Petition in Suit Affecting the Parent-Child Relationship, a Temporary Restraining Order and Order Setting Hearing for Temporary Orders, a Motion for Issuance of Writ of Attachment and an Order for Issuance of Writ of Attachment.
8. According to these court filings, Loftin was seeking to obtain immediate temporary custody and possession of Victoria, away from her father, Kellum, in order to take the child to her mother's funeral the next morning.
9. In support of the Petition and Request for Temporary Restraining Order, Loftin provided an affidavit that stated as the basis for the claim of "immediate and irreparable injury, loss or damage" to the child that Kellum would not allow Victoria to attend her mother's funeral.
10. Believing that it was tragic for Kellum not to allow his daughter to attend her mother's funeral, Judge Plunk signed the Temporary Restraining Order and issued a Writ of Attachment for the child, who was to be taken from Kellum and immediately turned over to her stepfather, Loftin, as he waited at the courthouse.
11. At approximately 8:55 p.m. that evening, two Hardin County Constables and a Hardin County Juvenile Detention Officer arrived at the hair salon where Victoria was getting her hair done for her mother's funeral. After serving Kellum's wife with the Writ of Attachment, the officers took the child into their custody and delivered her to her stepfather, Loftin.
12. On or about Tuesday, August 12, 2003, following the funeral, Victoria was returned to her father, Kellum.

13. Kellum, who had retained an attorney to represent him in the matter, filed a Motion to Recuse Judge Plunk from presiding over any other proceedings in the case.
14. On or about August 21, 2003, a visiting judge arrived at the Hardin County courthouse to hold a hearing on the Motion to Recuse; however, the parties reached an agreement and the motion was withdrawn.
15. On or about November 19, 2003, Judge Plunk granted Loftin's Motion for Non-suit dismissing the case.
16. According to Judge Plunk, he has known Peterson for over thirty (30) years and has known Peterson's daughter, Walton, her entire life. Peterson has been employed as his court coordinator since April 1995. Walton regularly appears in his court, both as Assistant County Attorney and as a private family law practitioner.

CJC No. 04-1119-DI

17. On or about July 26, 2004, Judge Plunk presided over a motion for enforcement hearing regarding *In the Matter of Johnson*, Cause No. 43,032.
18. On the Friday before the Monday hearing, Myrna Davila Gregory ("Gregory"), the Houston attorney representing the movant in the case, was advised by her client that he had concerns about Judge Plunk's ability to be fair and impartial due to the judge's relationship with opposing counsel, Walton, the daughter of the judge's court coordinator.
19. Based upon her client's concerns, Gregory immediately prepared a motion seeking to recuse Judge Plunk from the case. Gregory attempted to contact Walton prior to filing the motion, but was unsuccessful. Gregory faxed the Motion to Recuse to the court and to Walton that same afternoon.
20. At the commencement of the enforcement hearing on July 26th, Judge Plunk advised Gregory that he would not voluntarily recuse himself from the case and would have another judge hear her motion because "this is an issue that has been raised before. It's been litigated before."¹
21. Judge Plunk then stated "since this has been litigated many times before, Ms. Walton may want to file some sort of motion for sanctions after this; and I will seriously consider any sort of motion."
22. Shortly thereafter, Walton filed a response to the Motion to Recuse on behalf of her client seeking sanctions against Gregory and/or her client.
23. In the Response to the Motion to Recuse, Walton states that she "has practiced in Judge Plunk's court for more than 10 years and [Walton's] mother has been

¹ In his testimony before the Commission, however, Judge Plunk stated that prior to the filing of Gregory's motion, the issue of his recusal and his relationship with Walton had never been raised in the *Johnson* case.

employed by the 365th Judicial District Court for a period of at least 9 years and there has been no favoritism shown in any case being heard by the Honorable Britt Plunk.”

24. On or about July 29, 2004, a visiting judge denied the Motion to Recuse and the Motion for Sanctions.

RELEVANT STANDARDS

1. Canon 2B of the Texas Code of Judicial Conduct states, in pertinent part: “A judge shall not allow any relationship to influence judicial conduct or judgment.”
2. Canon 3B(4) of the Texas Code of Judicial Conduct states, in pertinent part: “A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity,”

CONCLUSION

The Commission concludes from the facts and evidence presented that Judge Plunk’s close relationship with opposing counsel, Rebecca Walton, the daughter of his longtime court coordinator, influenced his conduct and judgment in both of the cases described above, causing litigants and their counsel to form legitimate concerns that the judge would not be fair, neutral, and impartial in proceedings involving Walton. Because of this relationship, Judge Plunk failed to diligently review and question the pleadings presented to him by Walton, which effectively deprived a father of possession and custody of his child on the eve of her mother’s funeral, without any opportunity for a hearing to determine whether the representations made by Loftin were true or what was in the best interests of the child. In taking this action, the Commission declines to address whether the judge acted within his legal authority to enter the orders presented to him by Walton. Absent extraordinary circumstances, that authority lies with the appellate courts, not this Commission. However, because the consequences of the judge’s actions in this instance were so egregious and because of the admitted relationship among the key players – Judge Plunk, Rebecca Walton and Rita Peterson – the Commission concludes that the judge’s actions constituted a willful violation of Canon 2B of the Texas Code of Judicial Conduct.

In addition, the Commission acknowledges that in any legal community, relationships exist between judges and attorneys. However, no matter how widely known the relationship may be, there remains an ethical responsibility owed by the judge to publicly disclose the nature and extent of this relationship so that all litigants and attorneys are able to make informed decisions about whether the judge is capable of fairly and impartially deciding their cases. It is not enough that judges act fairly and impartially, they must also *appear* to act fairly and impartially in order to maintain and enhance public confidence in the judiciary. Despite statements from numerous witnesses who observed the incident in question and assured the Commission that Judge Plunk’s tone was courteous and patient, the fact remains that Judge Plunk’s statements about sanctioning Gregory, made in open court, were perceived as a threat and confirmed to the out-of-town lawyer that Walton was in a special position to influence this judge. That kind of threat, when combined with the close relationship with Walton, demonstrated a

lack of patience, courtesy and the dignity required of a judicial officer, in violation of Canon 3B(4) of the Texas Code of Judicial Conduct. In condemning Judge Plunk's conduct toward Gregory, the Commission reminds judges of the historic role that the judiciary has played in mentoring lawyers in order to foster the continually high ethical standards of the legal profession. In this regard, Judge Plunk's conduct has undermined that goal, as well as the public's confidence in the integrity, impartiality, and independence of the Texas judiciary.

In condemnation of the conduct described above that violated Canons 2B and 3B(4) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC WARNING** to the Honorable Britt Plunk, Judge of the 356th District Court in Kountze, Hardin County, Texas.

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

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 __30th__ day of May, 2006.

ORIGINAL SIGNED BY

Honorable Monica A. Gonzalez, Chair
State Commission on Judicial Conduct