



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

**IN RE: HONORABLE JOSIE FERNANDEZ
JUSTICE OF THE PEACE, PRECINCT 4
FREER, DUVAL COUNTY, TEXAS**

CJC Nos. 17-1465 AND 18-1078

**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 Josie Fernandez ("Judge Fernandez") was the Justice of the Peace for Precinct 4, in Freer, Duval County, Texas; and

WHEREAS on or about April 7, 2017, the Commission received a confidential complaint from a concerned citizen (CJC No. 17-1465), concerning Judge Fernandez's social media activities; and

WHEREAS on or about May 17, 2018, the Commission received another confidential complaint from a concerned citizen (CJC No. 18-1078), raising additional concerns regarding Judge Fernandez's social media activities, as well as allegations of behavior by the judge that, if proven true, could potentially constitute criminal conduct; and

WHEREAS on or about September 22, 2021, the Commission initiated Formal Proceedings against Judge Fernandez (a true and correct copy of which is attached as Exhibit A hereto); and

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

WHEREAS no prior disciplinary action has been taken against Judge Fernandez, who denies the allegations in their entirety, and

WHEREAS the parties agree that the allegations of judicial misconduct, if found to be true, could result in further disciplinary action against Judge Fernandez, up to and including removal from office; and

WHEREAS the parties to this Agreement are desirous of resolving these matters without the time and expense of further disciplinary proceedings.

IT IS THEREFORE AGREED that Judge Fernandez, upon the signing of this Agreement, officially and formally resigns her judicial duties effective immediately, and is entering into this Agreement to resolve the above-referenced complaints 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 Judge Fernandez in connection with the above-referenced matters.

IT IS FURTHER AGREED that Judge Fernandez, by her execution of this voluntary agreement, does not admit guilt, fault, or liability regarding the matters contained in the complaints referenced above.

IT IS FURTHER AGREED that, upon the Commission's approval of this Agreement, Judge Fernandez 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 but not limited to the performance of wedding ceremonies.

IT IS FURTHER AGREED that any violation of this Agreement by Judge Fernandez would constitute willful or persistent conduct that is clearly inconsistent with the proper performance of her 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 this Agreement shall be made public as a voluntary agreement to resign from judicial office, pursuant to Section 33.032(h) of the Texas Government Code, and 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 Judge Fernandez, 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 her by any court or tribunal.

AGREED TO AND ACCEPTED upon its execution by the parties.

SIGNED BY:


HON. JOSIE FERNANDEZ


HON. DAVID HALL, CHAIR
STATE COMMISSION ON JUDICIAL
CONDUCT

Date: 10-10-21

Date: 10/22/2021

VERIFICATION

State of Texas §
County of Duval §

BEFORE ME, the undersigned authority, on this day personally appeared **JOSIE FERNANDEZ**, who by me being first duly sworn, on her 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 her understanding of the terms and conditions of, and voluntary consent to enter into, such Agreement.

SWORN TO BEFORE ME, on this the 20 day of October, 2021.

Debbie S. Martinez
NOTARY PUBLIC, IN AND FOR THE STATE OF
TEXAS

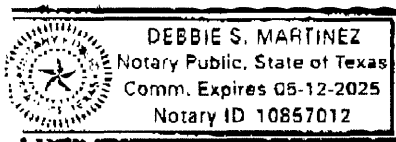


EXHIBIT A

**FILED**

Clerk of the Commission

BEFORE THE STATE COMMISSION**ON JUDICIAL CONDUCT**

9/22/21

In Re Judge No. 103

By

INQUIRY CONCERNING**JUDGE NO. 103****NOTICE OF FORMAL PROCEEDINGS****TO THE HONORABLE JOSIE FERNANDEZ, JUSTICE OF THE PEACE, PRECINCT 4,
FREER, DUVAL COUNTY, 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 Josie Fernandez, Justice of the Peace, Precinct 4, Freer, Duval County, Texas, that formal proceedings have been instituted against her by the State Commission on Judicial Conduct, based upon the following:

FACTUAL ALLEGATIONS***Background Information***

1. At all times relevant hereto, the Honorable Josie Fernandez was the Justice of the Peace, Precinct 4, in Freer, Duval County, Texas.
2. Judge Fernandez was first elected Justice of the Peace in 2014 and took the bench on June 14, 2014. She was re-elected in 2018 and her current term ends on December 31, 2022.
3. On April 7, 2017, the State Commission on Judicial Conduct (the "Commission") received a confidential complaint against Judge Fernandez ("CJC No. 17-1465") concerning her activities on social media and the Commission began an investigation into same.
4. On February 21, 2018, the Commission sent a Letter of Inquiry to Judge Fernandez about the allegations contained in CJC No. 17-1465 and other instances of potential misconduct relating to her Facebook activities discovered by the Commission during its investigation.
5. On March 22, 2018, Judge Fernandez timely responded to the Commission's Letter of Inquiry in CJC No. 17-1465 and provided sworn responses to the Commission's inquiry.
6. On May 17, 2018, the Commission received another confidential complaint against Judge Fernandez ("CJC No. 18-1078"). In addition to more allegations about Judge Fernandez's Facebook activities, the second confidential complaint also accused the judge of behavior that, if proven true, could potentially constitute criminal conduct.
7. Accordingly, in 2018, the Commission referred the allegations against Judge Fernandez to the Office of the Attorney General (the "OAG") for possible criminal prosecution and stayed its own investigation of both complaints pending the outcome of same.

8. In December of 2019, the Commission received notification the OAG did not intend to pursue criminal charges against Judge Fernandez based on its investigation of the complaints against her. As a result, in early 2020, the Commission voted to reinstate its investigation into Judge Fernandez's conduct.

Improper Dismissal of Traffic Citations & Falsification of Court Record

9. Some time prior to April 2018, Jacqueline Maggard, an employee of the Freer Police Department and a longtime personal acquaintance of Judge Fernandez, received a traffic citation for failing to wear a seat belt while driving (the "Seat Belt Citation").¹
10. Judge Fernandez dismissed the Seat Belt Citation based on her recollection of Ms. Maggard's previous volunteer efforts on behalf of the community.
11. Judge Fernandez has never specifically identified or produced complete court records relating to the Seat Belt Citation despite numerous requests from the Commission to provide same.
12. On April 27, 2018, Ms. Maggard received the 2018 Speeding Citation.
13. On May 9, 2018, at the Freer police station, Ms. Maggard and Judge Fernandez communicated about both the Seat Belt Citation and the 2018 Speeding Citation and the exchange was captured on an audio recording. In the recording, Judge Fernandez appears to inform Ms. Maggard she has already dismissed each of the tickets, as a result of prior community service by Ms. Maggard.
14. In her written statement to the Commission, Ms. Maggard stated that during their May 9, 2018, conversation at the Freer Police Station, Judge Fernandez said to her words to the effect of "Don't worry, just go vote."
15. During her sworn testimony before the Commission, Judge Fernandez acknowledged she told Ms. Maggard to "go vote" but noted she did not specify who she should vote for.
16. On May 25, 2018, Ms. Maggard went to Judge Fernandez's office to arrange to perform community service in relation to the 2018 Speeding Citation.
17. Judge Fernandez closed out the 2018 Speeding Citation without requiring Ms. Maggard to enter a plea or complying with the other requirements set forth in Chapter 45 of the Texas Code of Criminal Procedure.
18. Judge Fernandez produced, signed, and gave to Ms. Maggard a document bearing her official letterhead that stated Ms. Maggard completed 20 hours of community service for the Freer Food Bank "for" the 2018 Speeding Citation. The document identifies four occasions and breaks down by hours Ms. Maggard's supposed service.

¹ The exact timing of this citation and citation number are unclear to the Commission as Ms. Maggard was unable to produce a copy of the ticket and Judge Fernandez has never responded to the Commission's numerous requests for the court records regarding that specific case. Eventually, Judge Fernandez produced copies of three citations issued against Ms. Maggard in her precinct, in response to a subpoena from the Commission. Those citations include two citations for failing to wear a seatbelt - the first issued on May 15, 2015, and the second on September 29, 2015, and a traffic citation for speeding issued on April 27, 2018, (the "2018 Speeding Citation"). The citation for the May 15, 2015, no seat belt citation bears the handwritten notation, "Community Service".

19. During her sworn testimony before the Commission, Judge Fernandez admitted she dismissed at least the two traffic citations referenced above received by Ms. Maggard, without complying with the law in her handling of same, and that she fabricated the information contained in the document referenced in Paragraph 18, above.
20. In light of Judge Fernandez's testimony about her handling of traffic citations and the records she keeps with respect thereto, the Commission subpoenaed the court records for every citation filed in her court since 2014, when she assumed the bench.
21. As alluded to above, in response to the subpoena, Judge Fernandez produced only six identical copies of the three traffic citations issued to Ms. Maggard described in FN 1, above.

Facebook Activities

22. Judge Fernandez regularly engaged in conduct on her personal Facebook page, which clearly identified her as a judge and was publicly available, that was potentially violative of the Texas Code of Judicial Conduct. This conduct included:
 - Several Facebook posts promoting, advertising, and/or otherwise expressing her support for countless consumer products, businesses, and other commercial endeavors.
 - Several Facebook posts indicating her support for and association with law enforcement, the "Blue Lives Matter" movement, and the United States Border Patrol, including a picture of herself wearing a "Blue Lives Matter" pin on her judicial robe.
 - Several Facebook posts expressing her contempt and disdain for criminal defendants, including reposting mug shots with derogatory statements and publicly cheering on law enforcement in their pursuit of such individuals.
 - Several Facebook posts promoting fundraising efforts by civic, charitable, and educational organizations, as well as engaging in direct fundraising/solicitation for various personal and local causes, and publicly using the resources of her judicial office to facilitate same.
 - Several Facebook page posts supporting candidates campaigning for public office.
23. Judge Fernandez was first notified in February of 2018 regarding the Commission's concerns about her Facebook activities. In her March 22, 2018, written responses, Judge Fernandez acknowledged the Commission's concerns and indicated her intent to change her practices.
24. Judge Fernandez again acknowledged the Commission's concerns about her Facebook activities in her written responses on October 27, 2020.
25. Notwithstanding the Commission's concerns and her acknowledgment of same, Judge Fernandez made no changes to her Facebook page, nor did she alter her posting practices until after her appearance before the Commission in April of 2021.

Circulation of Indecent Photograph & Testimony Before the Commission

26. Submitted with the complaint in CJC No. 18-1078 was a copy of a "selfie" photograph showing the torso of a naked woman cupping her exposed breast (the "Naked Selfie"). The Confidential

Complainant alleged it was a photograph of Judge Fernandez and that the judge sent it to one or more members of the community in exchange for votes.

27. In her sworn written responses to the Commission regarding this matter, Judge Fernandez acknowledged she took the Naked Selfie and stated:

This photo was hacked from my phone more than 8 years ago. I immediately reported it to Sheriff Romeo R. Ramirez. The photo always appears when election time rolls around for me. Believe me this photo has been a nightmare for myself and family. I would never send it asking for Votes.

28. Sheriff Ramirez contradicted Judge Fernandez's response, stating she never contacted him personally or filed an incident report with his office claiming her phone had been hacked and/or that the Naked Selfie was stolen.
29. Sheriff Ramirez provided a copy of an incident report (Duval County Report No 2020020015) filed by Judge Fernandez on February 3, 2020, which shows Judge Fernandez sought help from the police because the Naked Selfie was posted to Snapchat and being widely shared online in the Freer Community.
30. The officer who drafted the incident report, Officer Ricardo Carrillo, said Judge Fernandez never stated her phone was hacked or suggested the Naked Selfie was somehow stolen.
31. Officer Carrillo indicated that several years earlier, he had taken an incident report from Judge Fernandez about alleged threats she was receiving from the wife of her boyfriend, and during this conversation Judge Fernandez said something about the wife possibly accessing the contents of her phone.
32. Officer Carrillo provided the following written statement to the Commission:
- In regards to Duval County Report No 2020020015, Josie Fernandez stated to me the photo was her and she took the photo because a boyfriend had asked her for a photo of her breast. Fernandez stated to me what do you do when a boyfriend ask you for a photo? You send it, she stated.
33. During her sworn testimony before the Commission, Judge Fernandez acknowledged sending the Naked Selfie to a boyfriend at his request but also insisted the Naked Selfie was stolen off her phone.
34. Judge Fernandez stated under oath that she was recently contacted by Sheriff Ramirez about this matter and was told that a woman had been arrested for hacking her phone and stealing the Naked Selfie.
35. Sheriff Ramirez refuted Judge Fernandez's testimony, stating there has been no arrest of any person on charges related to Judge Fernandez or her cell phone, and that the alleged conversation between him and Judge Fernandez about same never occurred.

Failure to Cooperate with the Commission's Investigation

36. On May 1, 2020, the Commission sent a Letter of Inquiry to Judge Fernandez about the allegations against her in CJC No. 18-1078, and she did not respond.

37. The Commission contacted Judge Fernandez by telephone in August of 2020 and the judge said she never received the inquiries related to CJC No. 18-1078, so the Commission resent the Letter of Inquiry to Judge Fernandez on August 26, 2020. Judge Fernandez again failed to provide a timely response to the Letter of Inquiry.
38. On October 13, 2020, the Commission again contacted Judge Fernandez by telephone about the pending Letter of Inquiry and on October 27, 2020, Judge Fernandez finally submitted her responses.
39. After reviewing Judge Fernandez's responses and investigating the claims made by the judge therein, the Commission sent Judge Fernandez another Letter of Inquiry on November 5, 2020. To date, Judge Fernandez has never provided responses to the Commission's November 2020 Letter of Inquiry.
40. During the pendency of this case, the Commission repeatedly asked Judge Fernandez to provide copies of certain court records relevant to the allegations contained in the complaints and/or arising from the Commission's investigation. Judge Fernandez has never provided a complete response related to the requested court records.
41. On December 10, 2020, the Commission notified Judge Fernandez that her failure to cooperate with the Commission's investigation could serve not only as an enhancement factor with respect to the current complaints against her, but also as the basis for a separate complaint pursuant to Section 33.001(b)(5) of Texas Government Code and Article V, Section 1-a(6)(A) of the Texas Constitution.
42. At its February 2021 meeting, the Commission considered the complaints against Judge Fernandez and voted to invite the judge to appear at its next regularly scheduled meeting to give testimony about the allegations against her.
43. On April 8, 2021, Judge Fernandez appeared before the Commission with counsel, and gave sworn testimony regarding CJC Nos. 17-1465 and 18-1078.
44. Along with her sworn testimony referenced in Paragraph No. 19, above, certain other statements made by Judge Fernandez during her April 8, 2021, appearance cause the Commission to harbor significant concerns about her handling of traffic citations in general, her maintenance of records with respect to same, and her reporting of case activity regarding such cases to both the Office of Court Administration and Duval County.
45. On June 22, 2021, the Commission served on Judge Fernandez a Subpoena for Production of Documents directing her to produce not only the documents previously requested by the Commission, but the court records relating to each traffic citation filed in her court since she assumed the bench in 2014.
46. Again, Judge Fernandez responded to the Commission's subpoena by producing only the six identical copies of three traffic citations issued to Ms. Maggard described in FN 1, above.

RELEVANT STANDARDS

1. Article V, §1-a(6)A of the Texas Constitution provides, in relevant part, that any Justice or Judge of the courts established by the Constitution or created by the Legislature may be removed from office, disciplined, or censured for "incompetence in performing the duties of

the 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.”

2. Article V, §1-a(7) of the Texas Constitution provides that “The Commission shall keep itself informed as fully as may be of circumstances relating to the misconduct or disability of particular persons holding an office named in Paragraph A of Subsection (6) of this Section, receive complaints or reports, formal or informal, from any source in this behalf and make such preliminary investigations as it may determine. Its orders for the attendance or testimony of witness or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings in the District Court or by a Master.”
3. §33.001(b)(5) 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, *inter alia*, “willful violation of a provision of the Texas penal statutes or the Code of Judicial Conduct” and “failure to cooperate with the commission.”
4. Canon 2A of the Texas Code of Judicial Conduct provides in relevant part that “A judge shall comply with the law...”
5. Canon 2B of the Texas Code of Judicial Conduct provides, in relevant part, that “A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.”
6. Canon 3B(2) of the Texas Code of Judicial Conduct provides, in relevant part, that “A judge...shall maintain professional competence in [the law].”
7. Canon 3B(6) of the Texas Code of Judicial Conduct provides, in relevant part, that “A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.”
8. Canon 4A(1) of the Texas Code of Judicial Conduct provides that “A judge shall conduct all of the judge’s extra-judicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially as a judge.”
9. Canon 4C(2) of the Texas Code of Judicial Conduct provides, in relevant part, that “A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization.”
10. Canon 5(2) of the Texas Code of Judicial Conduct provides, in relevant part, that “A judge...shall not authorize the public use of his or her name endorsing another candidate for any public office.”

CHARGE I

Improper Dismissal of Traffic Citations & Falsification of Court Record

Judge Fernandez’s dismissals of the Seat Belt Citation and 2018 Speeding Citation for her friend, Jacqueline Maggard, without complying with Chapter 45 of the Texas Code of Criminal Procedure, as well as fabricating a court record with respect to 2018 Speeding Citation, constitute

incompetence in the performance of her duties, willful violations of the Code of Judicial Conduct and/or willful or persistent conduct that is clearly inconsistent with the proper performance of her duties and/or cast public discredit on the judiciary and/or the administration of justice, in violation of the standards set forth in:

1. Article V, §1-a(6)A of the Texas Constitution;
2. Canon 2A of the Texas Code of Judicial Conduct;
3. Canon 2B of the Texas Code of Judicial Conduct; and
4. Canon 3B(2) of the Texas Code of Judicial Conduct.

CHARGE II

Facebook Activities

Judge Fernandez's social media activities, including, without limitation, making several Facebook posts or allowing several posts to appear on her Facebook page that; (i) promoted, advertised and/or expressed her support for consumer products, businesses, and other commercial endeavors; (ii) indicated her support for and association with law enforcement, the Blue Lives Matter movement, and the U.S. Border Patrol; (iii) expressed her contempt or disdain for criminal defendants; (iv) promoted fundraising efforts by civic, charitable, and educational organizations, as well as her own direct solicitations for various personal and local causes; and (v) promoting the campaigns of several candidates for public office, constitute willful violations of the Code of Judicial Conduct and/or willful or persistent conduct that is clearly inconsistent with the proper performance of her duties and/or cast public discredit upon the judiciary and/or the administration of justice, in violation of the standards set forth in:

1. Article V, §1-a(6)A of the Texas Constitution;
2. Canon 2B of the Texas Code of Judicial Conduct;
3. Canon 3B(6) of the Texas Code of Judicial Conduct;
4. Canon 4A(1) of the Texas Code of Judicial Conduct;
5. Canon 4C(2) of the Texas Code of Judicial Conduct; and
6. Canon 5(2) of the Texas Code of Judicial Conduct.

CHARGE III

Circulation of Indecent Photograph & Testimony Before the Commission

Judge Fernandez's creation and forwarding of the Naked Selfie from her cell phone to one or more persons in her community, which image was then widely disseminated and shared online, and her subsequent untruthful testimony to the Commission regarding these matters, constitute willful violations of the Code of Judicial Conduct and/or willful conduct that is clearly inconsistent with the proper performance of her duties and/or cast public discredit upon the judiciary, in violation of the standards set forth in:

1. Article V, §1-a(6)A of the Texas Constitution;
2. §33.001(b)(5) of the Texas Government Code; and
3. Canon 2A of the Texas Code of Judicial Conduct.

CHARGE IV

Failure to Cooperate with the Commission's Investigation

Judge Fernandez's failures to respond to the Commission's inquiries regarding CJC No. 18-1078 in a timely manner, and to provide court records requested and subpoenaed by the Commission or to provide any explanation for her failure to do so, constitute willful conduct that is clearly inconsistent with the proper performance of her duties, in violation of the standards set forth in:

1. Article V, §1-a(6)A of the Texas Constitution;
2. Article V, §1-a(7) of the Texas Constitution; and
3. §33.001(b)(5) of the Texas Government Code.

Judge Fernandez is hereby notified that she 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 her. Judge Fernandez's verified answer should be forwarded or delivered to the State Commission on Judicial Conduct, P.O. Box 12265, Austin, Texas, 78711.

Signed this 22nd day of September 2021.


EXAMINERS

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Telephone: (512) 463-5533
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By: 
Michael Graham
Texas Bar No. 24113581

OFFICER'S RETURN

Came to hand the ____ day of _____, 2021, at _____ o'clock, __.m., and executed the ____ day of _____, 2021, at _____ o'clock, __.m., by delivering to the within named Respondent, the **Honorable Josie Fernandez**, at _____, _____, Texas _____, in person, a true copy of the attached Notice of Formal Proceedings.

SHERIFF/CONSTABLE/AUTHORIZED PERSON

BY: _____

(Printed Name)

_____ County, Texas