

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

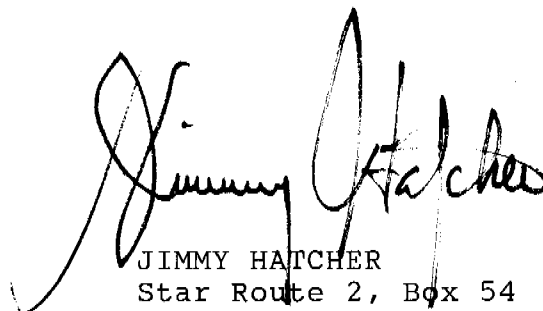
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INQUIRY CONCERNING A
JUDGE, No. 93-62
IN RE: P. KEVIN DAVEY

CASE NO. 82,328

A matter before the Court on Findings
Of Fact, Conclusions of Law and Recom-
mendation of the Florida Judicial Qua-
lifications Commission for removal of
Judge P. Kevin Davey as a judge of the
Courts of the State of Florida.

BRIEF AMICUS CURIAE OF JIMMY HATCHER



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PRELIMINARY STATEMENTS

Brief

This is not a "brief" in the traditional sense because of the fact that this instant case is not an appeal, but is a disciplinary proceeding pursuant to Article V, Section 12 of the Constitution Of The State Of Florida. This "brief" is submitted by the undersigned amicus curiae as a friend of the court in support of the position of the Florida Judicial Qualifications Commission as set forth in their Finds Of Fact, Conclusions Of Law And Recommendation as filed herein on January 11, 1994. The Florida Judicial Qualifications Commission has recommended the removal of Judge P. Kevin Davey as a judge in the State of Florida.

Amicus Curiae - Jimmy Hatcher

Jimmy Hatcher is not a member of the Florida Bar or of any other state or federal bar. Jimmy Hatcher is president of THE FOUNDATION TO FIGHT CORRUPTION, a "think tank", non-profit organization that was founded in the year 1977. Jimmy Hatcher is also the managing editor of THE CORRUPTION CHRONICLES, a widely distributed news letter that is "Keeping An Eye On The Legal Community." Approximately eight hundred (800) judges in

the State of Florida receive each issue of THE CORRUPTION CHRONICLES by direct mail. THE CORRUPTION CHRONICLES is also widely distributed by a number of "grass roots" organizations.

Jimmy Hatcher is a "student of the law" having his own private law library. Jimmy Hatcher is better versed in the law (both sacred law and secular law) than are some judges and lawyers. Jimmy Hatcher is a "PUBLIC CITIZEN" who deeply respects our system of justice and works tirelessly to improve our system of justice. By order rendered herein on February 18, 1994 this Great Supreme Court graciously granted Jimmy Hatcher's motion for leave to appear herein as Amicus Curiae.

THIRTEEN MILLION (13,000,000) PUBLIC CITIZENS

On page one (1) of the Brief Amicus Curiae Of Robert P. Smith as filed herein on February 14, 1994, Mr. Smith mentions a "host of Second Circuit practitioners" and further states that "more than one hundred of those practitioners" have authorized Mr. Smith to represent them in the filing of his brief amicus curiae. Robert P. Smith is a member of The Florida Bar and is identified in the organization as number 75630.

Jimmy Hatcher represents only himself in the filing of this brief amicus curiae. However, Jimmy Hatcher

believes and submits to this Court that this brief represents the views and feelings of the majority of his thirteen million (13,000,000) non-lawyer fellow Florida citizens, sometimes referred to as "THE PUBLIC" or "WE THE PEOPLE." YES! YES! YES! "THE PUBLIC" or "WE THE PEOPLE" need to be represented before this Great Supreme Court so that our views, our feelings, our suggestions and our remedies may also be considered in the continuing effort to improve our system of justice.

BOUND BY THE RECORD

Jimmy Hatcher as an amicus curiae is bound by the record in the presentation of this "brief" and the argument herein to this Honorable Court.

This ends our "preliminary statements."

ISSUE BEFORE THE COURT

Whether or not Judge P. Kevin Davey should be removed as a judge of the courts of the State of Florida as recommended by The Florida Judicial Qualifications Commission?

STATEMENT OF THE CASE AND THE FACTS

Jimmy Hatcher, the undersigned amicus curiae adopts the Proceedings and Findings Of Fact as set out by The Florida Judicial Qualifications Commission beginning on page one (1) through page eighteen (18) of their FIND-

INGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION as filed herein on January 11, 1994 as his statement of the case and the facts as if set out herein in full.

SUMMARY OF ARGUMENT

Based upon the record herein as now before the Court, based upon the findings of fact, and the conclusions of law as set out herein by The Florida Judicial Qualifications Commission and based upon the argument and authorities as set out herein by the undersigned amicus curiae, Judge P. Kevin Davey should be removed as a judge in the courts of the State of Florida.

ARGUMENT AND AUTHORITIES

The undersigned amicus curiae respectfully offers the following argument and authorities in support of the recommendation of The Florida Judicial Qualifications Commission (hereinafter FJQC) to remove Judge P. Kevin Davey as a judge in the courts of the State of Florida.

Persuasive Force - Great Weight

In the year 1977, this Court in the case of In Re LaMotte, 341 So 2d 513 at page 516 stated:

"The findings and recommendations of the Judicial Qualifications Commission are of persuasive force and should be given great weight."

This Court removed Judge LaMotte from office as a circuit court judge. In his concurring opinion in LaMotte Justice England at page 518 stated:

"I have to agree with my colleagues, however, that we are essentially bound by the Commission's finding as "fact" that LaMotte never intended to repay the state for these expenses unless notified to do so. The record before us contains adequate evidence, although all of it is circumstantial, to support that finding."

We emphasize Justice England's statement "we are essentially bound by the commission's finding of fact." Yes, "bound by the Commission's finding of fact."

In the year 1980, this Court in the case of In Re Crowell, 379 So 2d 107 at page 109 stated:

"Before reporting findings of fact to this Court, the Commission must conclude that they are established by clear and convincing evidence. There were substantial conflicts in the testimony received by the Commission. But because the Commission was in a position to evaluate the evidence first-hand, its findings of fact "are of persuasive force and should be given great weight."

This Court removed Judge Crowell from office as a circuit judge.

In the year 1993, this Court in the case of In Re Graham, 620 So 2d 1273 at page 1275 stated:

"To impose any degree of discipline upon a judge, the evidence regarding the charges against him or her must be clear and convincing. Although the findings of the JQC are of "persuasive force", this Court is

charged with rendering the ultimate decision on whether the evidence proves that Graham's conduct is unbecoming a member of the judiciary. The object of these disciplinary proceedings 'is not to inflict punishment but to determine whether one who exercises judicial power is unfit to hold a judgeship.'

This Court removed Judge Graham from office as a county court judge.

In the three foregoing quoted cases, In Re LaMotte, In Re Crowell and In Re Graham, this Court merely held that the findings of fact of the FJQC are of "persuasive force" and "should be given great weight." The undersigned respectfully argues that the findings of the FJQC should come to this Court clothed with a presumption of correctness.

The findings of fact of a sole circuit or county court trial judge comes to the District Court or to this Court on appeal clothed with a presumption of correctness.

The findings of fact of a six member jury made up of public citizens comes to the District Court or to this Court on appeal clothed with a presumption of correctness.

The findings of fact of a twelve member jury made up of public citizens comes to the District Court or to this Court on appeal clothed with a presumption of correctness.

This instant case is not an appeal but is a disciplinary action wherein the FJQC is "vested with jurisdiction to investigate", to make findings of fact and to

make recommendation to the Supreme Court of Florida to either reprimand a judge or to remove a judge from office. Article V, Section 12(a) Fla. Const. In our instant case at bar the FJQC was made up of six (6) of Judge Davey's fellow judges, two (2) of Judge Davey's fellow lawyers and five (5) of Judge Davey's fellow citizens, all thirteen (13) being highly qualified to make correct findings of fact and qualified to made the proper recommendation to the Supreme Court of Florida.

The undersigned respectfully submits to this Court that in addition to the "persuasive force" and "great weight" given in the past to the findings of fact of the FJQC, that in this instant case and in all future disciplinary cases that this Supreme Court deem the findings of fact of the FJQC to be clothed with a presumption of correctness. Please remember Justice England's concurring opinion in In Re LaMotte wherein he stated that the Supreme Court of Florida is "bound by the Commission's finding" of fact. Applying Justice England's reasoning to Judge Davey's instant case, this Supreme Court is "bound by" the "findings of fact" as found and presented herein by the FJQC.

FJQC FINDINGS OF FACT

On January 11, 1994 the FJQC filed herein its FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION containing fifteen (15) pages of Findings Of Fact(pages 4-18). Crucial to the issue that is before the Court

herein, namely, whether or not Judge Davey should be removed as a judge, is Judge Davey's INTENT. Was it Judge Davey's INTENT to steal money from his law partners who are also fellow officers of the Court? Was it Judge Davey's INTENT to lie to his law partners? Was it Judge Davey's INTENT to defraud his law partners? What did the FJQC find? Did the FJQC make its findings by clear and convincing evidence? Did the FJQC find that Judge Davey is presently unfit to hold office? Let us now examine a number of the findings as found by the FJQC as set out in their Findings Of Fact as filed herein on January 11, 1994 and we quote therefrom as follows:

From page 13, par. 17:

"In this meeting, according to the testimony of Messrs. Douglass, Cooper and Coppins, Judge Davey admitted lying about the Bryant case and claimed that Cooper had "tricked him" into lying about it and that he had retained the Bryant fee as security in case Douglass did not honor the termination agreement (Tr.53-55, 159-61, 203-06). In the meeting, Mr. Douglass asked Judge Davey directly on several occasions, "Are there any other cases like the Bryant case that we should know about?" and Judge Davey specifically answered, "No, sir. There are not" (Tr.55, 161, 206). (Underlining emphasis added)

From page 14, par. 18:

"-----Judge Davey had closed the file on August 6, 1984 by filling out a "Closed File Check List," to which he signed his secretary's initials (Commission EX-12). Mr. Cooper testified that he had examined all of the Firm's closed files for the year 1984 and of the approximately 60 closed files, Judge Davey had closed two files by signing his own initials to the Closed File Check List,

but that the Breyer case was the only Closed File Check List on which Judge Davey had signed his secretary's initials (Tr.103; Commission EX-15). (Underlining emphasis added.)

From page 14, Par. 19:

"Judge Davey admitted that he had signed his secretary's initials to the Breyer Closed File Check List and testified that he closed that portion of the file relating to the tortfeasor claim and removed from the file the documents necessary to pursue the uninsured motorist claim (Tr.320-21). Judge Davey could not explain why he closed the file on August 6, 1984, fourteen months after settlement of the tortfeasor claim, admitted that the Firm was entitled to part of the Breyer fee and when asked why he had had the Breyer draft sent to this home, he said, to keep my options open" (Tr.356, 374, 391-92)." (Underlining emphasis added.)

From page 15, par. 20:

"The Commission, having had the opportunity to hear the witnesses and observe their demeanor, finds the testimony of Messrs. Cooper, Coppins and Douglass to be credible and the testimony of Judge Davey, where it was in conflict with the testimony of Messrs. Cooper, Coppins and Douglass, not to be worthy of belief." (Underlining emphasis added.)

From page 16, Par. 22 and page 17, par. 22:

"With respect to the Emma Bryant case, the Commission finds that the evidence is clear and convincing that Judge Davey intended to convert the entire Bryant fee to himself, that Judge Davey misrepresented the merits and value of the Bryant case to Messrs. Cooper and Coppins, and that, even if the first meeting to discuss Judge Davey's cases occurred in July 1984, Judge Davey nevertheless misrepresented the case to Cooper in November 1984 after he had settled the case and negotiated the draft through his personal account." (Underlining emphasis added.)

From page 17, Par. 23 and page 18, par. 23:

"With respect to the Carol Breyer case, the evidence is also clear and convincing that the actions of Judge Davey, by closing the Breyer file on August 6, 1984; by forging his secretary's initials to the Closed File Check List; by failing to advise the Firm with respect to the existence of the Breyer case or his ongoing negotiations between September and December 1984 to settle the case; by his untruthful response to Mr. Douglass' question, "Are there any other cases like the Bryant case?" at a time when he was engaged in negotiations for settlement of the case for a substantial sum, to which the Firm was unquestionably entitled to share in the fee; by his failure, after receiving a firm written offer of settlement on December 6, 1984 and settling the case on December 13, 1984, to advise the Firm of the settlement until December 21, 1984; by his signing as witness to the Breyer release using his home address; and by directing the adjuster to send the draft to his home address in order to keep his options open, all constitute clear and convincing evidence that Judge Davey intended to convert the Breyer fee and was thwarted in that effort only because the draft was payable to the Firm and the Bank contacted Mr. Douglass regarding receipt of the draft." (Underlining emphasis added.)

From page 18, par. 24:

"Public confidence and perception of the judiciary would be substantially eroded if Judge Davey remains on the Bench in the face of the findings of the Commission that he attempted to convert the Bryant fee and the Breyer fee and in the course thereof made numerous misrepresentations and untrue statements to the members of his Firm and lied under oath to the Commission at the trial of this cause in an attempt to justify his conduct. The record, therefore, shows and the Commission finds by clear and convincing evidence that Judge Davey's conduct with respect to the Emma Bryant case demonstrates his present unfitness to hold judicial office in this State. The record further shows and the Commission also finds by clear and convincing evidence that Judge Davey's conduct with

respect to the Carol Breyer case demonstrates his present unfitness to hold judicial office in this State." (Underlining emphasis added.)

The foregoing quoted "findings" clearly show that the FJQC made its "findings" based upon "CLEAR AND CONVINCING EVIDENCE," based upon what the "RECORD SHOWS" and after "HAVING HAD THE OPPORTUNITY TO HEAR THE WITNESSES AND OBSERVE THEIR DEMEANOR." Further, the FJQC, on page 16, paragraph 22 made a "finding" that:

"Judge Davey INTENDED to convert the entire Bryant fee to himself."

The emphasis on "INTENDED" is added. Further, the FJQC on page 18, paragraph 23 made a "finding" that:

"Judge Davey INTENDED to convert the Breyer fee -----."

The emphasis on "INTENDED" is added. In addition to having "persuasive force" and "great weight" the "findings" of the FJQC should come to this Honorable Court clothed with a presumption of correctness. In Re LaMotte, supra; In Re Crowell, supra; In Re Graham, supra; Article V, Section 12(a)(f), Fla. Const.

CRIMINAL CONDUCT - GREEDY PERSON

The undersigned amicus curiae has read the entire record as filed in this instant case in this Supreme Court including the transcripts of the testimony given during the two (2) day trial of Judge Davey. As a "common citizen", as a member of "the public", as one of "We The People", the conduct of Judge Davey as revealed

in the record of this instant case is criminal conduct which consists of THEFT, PERJURY, FORGERY and/or EXTORTION. The undersigned believes that the majority of the approximately thirteen million (13,000,000) of our fellow Florida citizens who make up "The Public" would also view Judge Davey's conduct as revealed in the record of this instant case to be criminal conduct consisting of THEFT, PERJURY, FORGERY and/or EXTORTION.

The record of this instant case also reveals that Judge Davey is a GREEDY PERSON. It appears from the record herein that GREED is the "sin" that has led to Judge Davey's downfall. Turning to the book of SACRED LAW, the great first century lawyer the earth now knows as the Apostle Paul wrote:

"9. What! Do you not know that unrighteous persons will not inherit God's Kingdom? Do not be misled. Neither fornicators, nor idolaters, nor adulterers, nor men kept for unnatural purposes, nor men who lie with men,

10. nor thieves, nor greedy persons, nor drunkards, nor revilers, nor extortioners will inherit God's Kingdom."
(Underlining emphasis added.)

The above is quoted from the New World Translation of the HOLY BIBLE, the book of SACRED LAW, as written at 1st Corinthians, Chapter 6, verses 9 and 10. Making application of the above to Judge Davey's conduct as revealed in the record of this instant case, it is clear that THIEVES, GREEDY PERSONS and EXTORTIONERS are disapproved.

Quoting from the same book of SACRED LAW the great Apostle John wrote at Revelation 21:8 as follows:

"8. But as for the cowards and those without faith and those who are disgusting in their filth and murderers and fornicators and those practicing spiritism and idolaters and all the liars, their portion will be in the lake that burns with fire and sulphur. This means the second death." (Underlining emphasis added.)

Making application of the foregoing quote to Judge Davey's conduct as revealed in the record of this instant case, it is clear that "ALL THE LIARS" are disapproved. Whether it be "sacred law" or whether it be our Florida "secular law", criminal conduct constituting THEFT, PERJURY, FORGERY and EXTORTION is disapproved. As this Great Supreme Court stated in the case of In Re Garrett, 613 So 2d 463 (1993) at page 465:

"However, it is essential to our system of justice that the public have absolute confidence in the integrity of the judiciary. We believe it would be impossible for the public to repose this confidence in a judge who had knowingly stolen property from another." (Underlining emphasis added.)

THEREFORE, the paramount concern of these proceedings must be the preservation of the trust and confidence of THE PUBLIC in the judiciary and in the integrity of our system of justice.

ENOUGH TO MAKE THE PUBLIC PUKE

During the last nine (9) years, from 1985 to the present, the media has bombarded THE PUBLIC with the

nauseous accounts of Judge Davey's in court battles with his law partners. It is enough to make THE PUBLIC puke, as the local saying goes. On pages 21-22 of its CONCLUSIONS OF LAW the FJQC found as follows and made the following recommendation concerning Judge Davey:

"Judge P. Kevin Davey, by conducting himself in the manner set out in the above Findings Of Fact, intentionally committed serious and grievous wrongs of a clearly unredeeming nature. The Commission rejects Judge Davey's contention that the events which occurred in 1984 and which gave rise to the charges are too remote to affect Judge Davey's present fitness to serve as a judge. Judge Davey's conduct with respect to the Emma Bryant case and with respect to the Carol Breyer case evidence character flaws which the passage of time alone does not mitigate or justify. In addition, Judge Davey has compounded his original misconduct by appearing before the Commission and attempting to explain his conduct through testimony that the Commission finds to be false in material respects. Compare In Re Inquiry Concerning Judge, 440 So. 2d 1267 (Fla. 1983), in which the Supreme Court said:

'The integrity of the judicial system the faith and confidence of the people in the judicial process, and the faith of the people in the particular judge are all affected by false statements of a judge.'(Id. at 1269.) "
(Underlining emphasis added.)

Also, in relation to lying to the FJQC under oath, please see In Re Berkowitz, 522 So 2d 843 (Fla. S. Ct. 1988) wherein this Supreme Court stated:

"The JQC found Berkowitz' willful deception, by itself, sufficient to warrant removal. We agree that lying to the JQC is very serious because the integrity of the judicial system, the faith and confidence of the people in the judicial process and the faith of the people in that particular judge are all affected by

the false statements of a judge."
(Underlining emphasis added.)

Further, the FJQC found as follows and made the following recommendation:

"Judge Davey has rendered himself an object of disrespect and public confidence in the judiciary will be eroded if he remains a member of it. Judge Davey is guilty of violating Canons 1 and 2 A. of the Code of Judicial Conduct. The Commission finds by clear and convincing evidence that Judge Davey's violations of these Canons demonstrate a present unfitness to hold office.

Recommendation of Removal

By an affirmative vote of not less than nine members, the Florida Judicial Qualifications Commission recommends that the Supreme Court of Florida remove P. Kevin Davey from his position as Circuit Judge for the Second Judicial Circuit, and render its Order and Judgment in accordance with the foregoing recommendation, for his conduct as hereinabove found to have occurred."
(Underlining emphasis added.)

SEND THE MESSAGE

Very appropriate to a disciplinary proceeding, such as this instant case at bar, are the words of wise King Solomon as written in the book of SACRED LAW at Ecclesiastes, chapter 8, verse 11 which state:

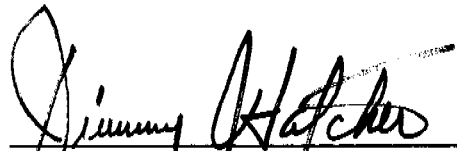
"11. Because sentence against a bad work has not been executed speedily, that is why the heart of the sons of men has become fully set in them to do bad."
(Quoted from the New World translation of the Holy Bible.)

This Great Supreme Court should clearly send the message by means of an order rendered in this case that

conduct of the nature as committed by Judge Davey as revealed herein will not be tolerated.

The undersigned amicus curiae supports the Florida Judicial Qualifications Commission in their recommendation "that the Supreme Court of Florida remove P. Kevin Davey as Circuit Judge for the Second Judicial Circuit, and render its Order and Judgment in accordance with the foregoing recommendation, for his conduct as hereinabove found to have occurred."

Respectfully served on this 7th day of March, 1994.


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Certificate Of Service

I HEREBY CERTIFY that a true and accurate copy of this document has been served by regular U.S. mail upon the following persons:

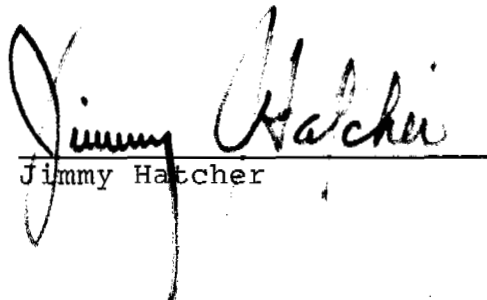
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on this 7th day of March, 1994.


Jimmy Hatcher