

**BEFORE THE COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON**

IN RE THE MATTER OF

The Honorable Richard C. Fitterer  
Judge, Grant County District Court

NO. 4286-F-113

**STIPULATION, AGREEMENT AND  
ORDER OF REPRIMAND**

The Commission on Judicial Conduct and Judge Richard C. Fitterer, Grant County District Court, do hereby stipulate and agree as provided for herein, pursuant to Rule 23 of the Commission's Rules of Procedure. This stipulation shall not become effective until approved by the Washington Commission on Judicial Conduct.

**I. STIPULATED FACTS**

1. Richard C. Fitterer (Respondent) has served as a judge of the Grant County District Court since 1995.
2. Pursuant to its constitutional authority, the Commission commenced an investigation of judicial misconduct based upon Respondent's self-report to the Commission of his arrest on November 23, 2003, on the charge of driving while under the influence of alcohol (DUI). According to the incident report, he was stopped by a law enforcement officer for speeding 73 miles per hour on a freeway in King County. No other signs of erratic driving were reported by the officer. Respondent was charged by prosecutor's citation with DUI in King County District Court on February 24, 2004.

3. On June 7, 2004, Respondent entered a plea of guilty to a reduced charged of Negligent Driving in the First Degree. The charge reduction followed a court ruling that the blood alcohol concentration test in Respondent's case was inadmissible. The terms of the court's sentence require him to comply with the results of a drug and alcohol evaluation, which he has since completed.

4. Following his initial arrest and prior to being charged, Respondent promptly reported the incident to the Commission on Judicial Conduct, to the local media, members of the defense bar and prosecutors, court staff, and to the officers of the District and Municipal Court Judges' Association (DMCJA), which Respondent serves as Treasurer. Respondent arranged for his fellow district court judge to hear discretionary matters on DUI cases while Respondent's matter was pending, and offered to recuse from any such cases since that time. Most of the attorneys who took their clients before Respondent have declined that option, and both local prosecutors and defense counsel in Grant County have expressed confidence in Respondent's ability to be fair in DUI cases despite his personal experience.

## II. AGGRAVATING AND MITIGATING FACTORS

In accepting this stipulation, the Commission takes into account the following aggravating and mitigating factors:

**A. Aggravating factors:**

1. Nature of the misconduct; extent to which the acts have been injurious to other persons

Negligent driving and driving under the influence are criminal offenses that are acknowledged to carry great risk of death, personal injury, and property loss. Moreover,

1 as a district court judge, DUI and alcohol-related offenses are the type of cases over which  
2 Respondent frequently presides.

3 2. The effect the misconduct has upon the integrity of and respect for the  
4 judiciary

5 It is reasonable for the public to expect that judges will comply with the criminal  
6 laws they enforce upon others. Although historically the offense of negligent driving or  
7 driving under the influence of alcohol were not widely perceived by the public as  
8 particularly reprehensible, that perception has changed greatly. Under the facts in this  
9 situation, this factor can be considered as both aggravating and mitigating, in that the  
10 incident in this case and resultant criminal charges against Respondent have not led to  
11 significant media coverage or expression of public concern. Respondent's offer to resign  
12 from his position as Treasurer of the District and Municipal Judges' Association was  
13 declined by the board.  
14

15 **B. Mitigating Factors**

16 1. The misconduct was an isolated instance  
17

18 Respondent has no prior criminal history and the incident appears to be at odds  
19 with his normal standard of personal behavior. Moreover, there was no personal injury or  
20 property damage in this case, and the charge was reduced from DUI to negligent driving  
21 in the first degree, a simple misdemeanor.

22 2. The incident happened out of the courtroom; not in the justice's official  
23 capacity

24 The incident happened outside the context of Respondent's judicial role. There is  
25 no indication that alcohol has been an issue in the judge's professional life. Respondent's  
26 drug and alcohol evaluation showed he has "no significant problem " with drugs or

1 alcohol, and recommended he complete a Drug and Alcohol Information School, which  
2 Respondent has completed.

3 3. Whether the judge exploited his official capacity to satisfy personal desires

4 The judge did not exploit, nor attempt to exploit, his official capacity in any way.  
5 Neither the reporting officer nor the prosecutors handling the case report that Respondent  
6 referenced his status as judge nor sought favorable treatment on that account at any point  
7 in the prosecution.  
8

9 4. Whether the judge has acknowledged or recognized that the acts occurred

10 Respondent has been promptly and consistently forthright that he committed the  
11 acts, and has accepted responsibility for them.  
12

13 5. Whether the judge has evidenced an effort to change or modify the conduct

14 Respondent obtained a drug and alcohol evaluation prior to being ordered to do so  
15 by the court, and has expressed motivation to comply with the recommendations and the  
16 order of the court.

17 6. Length of service in a judicial capacity

18 Respondent has served in a judicial capacity for nine years. With the exception of  
19 the matter under consideration, his record as a judge has been exemplary.  
20

21 7. Whether there has been prior disciplinary action concerning the judge

22 There has been no prior disciplinary action concerning Respondent.  
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- 1           8.     Whether the judge cooperated with the commission investigation and  
2                 proceeding.

3           Respondent promptly and fully cooperated with the Commission investigation and  
4 proceeding, and has expressed understanding and support for the need for a disciplinary  
5 system.

6                                 **III. AGREEMENT**

7           1.     Based upon the foregoing stipulated facts, Respondent and the Commission  
8 agree that Respondent's commission of the misdemeanor offense of negligent driving in  
9 the first degree, reduced from a charge of driving under the influence of alcohol,  
10 constitutes a violation of Canons 1 and 2(A) of the Code of Judicial Conduct.  
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12           Canon 1 requires judges to maintain and enforce high standards of judicial  
13 conduct, and personally observe those standards, so that the integrity and independence of  
14 the judiciary will be preserved.

15           Canon 2(A) requires judges to respect and comply with the law and to act at all  
16 times in a manner that promotes public confidence in the integrity and impartiality of the  
17 judiciary. Maintaining the prestige of judicial office is essential to a system of  
18 government in which the judiciary functions independently of the executive and  
19 legislative branches.  
20

21           2.     Based upon the stipulated facts, upon consideration and balancing of the  
22 aggravating and mitigating factors, Respondent and the Commission agree that  
23 Respondent's stipulated misconduct shall be sanctioned by the imposition of a reprimand.  
24 Were there prior or multiple acts of misconduct, property damage or personal injury, or  
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1 abuse of judicial office, or other aggravating factors, a higher sanction might be  
2 warranted.

3 3. Respondent further agrees and stipulates to comply with the following  
4 corrective terms and conditions:

5 a. *Compliance with District Court Terms and Conditions.*

6  
7 Respondent shall comply with all of the terms and conditions set  
8 forth in the sentence imposed in C496557 on June 7, 2004, in *State*  
9 *of Washington v. Richard Fitterer*, and provide proof to the  
Commission of Respondent's satisfactory compliance with the  
terms and conditions imposed by the Court.

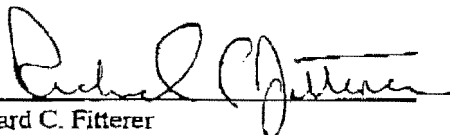
10 b. *Recusal from Conduct-Related Matters.*

11 Respondent believes that he can as a judge hear fairly and without  
12 bias, prejudice or conflict, matters involving legal charges of  
13 driving under the influence of alcohol. Respondent acknowledges,  
14 however, that Canon 2 of the Code of Judicial Conduct requires  
15 judges not only to avoid impropriety, but also to avoid the  
16 appearance of impropriety, in all their activities, and that his  
17 hearing such cases, even if not itself improper, may to the public  
18 have the appearance of impropriety. Accordingly, Respondent  
19 agrees that upon timely request of a party appearing before the  
court once a matter is set, he will recuse himself voluntarily as a  
judge from hearing or participating in matters involving legal  
charges of driving under the influence of alcohol for the one-year  
duration of the time period Respondent is under the jurisdiction of  
the King County District Court.

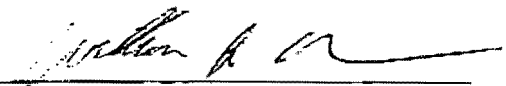
20 Standard Additional Terms of Commission Stipulation

21 4. Respondent agrees that by entering into this stipulation and agreement he  
22 hereby waives, in this proceeding, his procedural rights and appeal rights pursuant to the  
23 Commission on Judicial Conduct Rules of Procedure and Article IV, Section 31 of the  
24 Washington State Constitution.  
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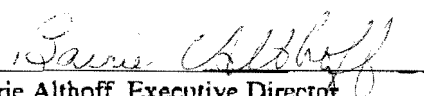
1           5.       Respondent further agrees that he will not retaliate against any person  
2 known or suspected to have cooperated with the Commission, or otherwise associated  
3 with this matter.  
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6   
7 Richard C. Fitterer

09/17/04  
Date

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9   
10 William A. Bowman  
11 Counsel for Respondent, WSBA #22502

9/17/04  
Date

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13   
14 Barrie Althoff, Executive Director  
15 Commission on Judicial Conduct  
WSBA #6121

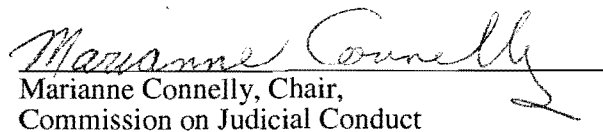
September 20, 2004  
Date

1 **FINDING AND ORDER**

2 Based upon the above stipulation and agreement, the Commission on Judicial  
3 Conduct

- 4 (1) finds that the conduct, as described in the above stipulation and agreement, of  
5 Judge Richard C. Fitterer violated rules of the Code of Judicial Conduct, and  
6  
7 (2) orders Judge Richard Fitterer  
8 (A) to appear personally before the Commission;  
9 (B) to fulfill the corrective terms and conditions of the stipulation and  
10 agreement as above set forth; and  
11 (C) to be, and Judge Richard C. Fitterer hereby is, REPRIMANDED for  
12 violating Canons 1 and 2(A) of the Code of Judicial Conduct.  
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14 Dated this 1st day of October, 2004.

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18 Marianne Connelly, Chair,  
19 Commission on Judicial Conduct  
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