

FILED

BEFORE THE COMMISSION ON JUDICIAL CONDUCT - 5 2001

OF THE STATE OF WASHINGTON COMMISSION ON JUDICIAL CONDUCT

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In Re the Matter of:
The Honorable Don L. McCulloch,
Judge
Cowlitz County Superior Court
312 SW First Avenue
Kelso, Washington 98626

No. 3118-F-93

STIPULATION, AGREEMENT
AND
ORDER OF ADMONISHMENT

The Commission on Judicial Conduct and the Honorable Don L. McCulloch, Judge of the Cowlitz County Superior Court, stipulate and agree as follows:

This stipulation is submitted pursuant to CJCRP 23 and shall not become effective until approved by the Washington Commission on Judicial Conduct.

STIPULATED FACTS

1. The Honorable Don L. McCulloch, Respondent, was at all times referred to herein a Judge of the Cowlitz County Superior Court, Kelso, Washington.

2. On March 25, 1999, during the trial of *Mizgawa v. Nyitrai*, Cause Number 92-2001459-1 conducted before Respondent, an issue arose regarding whether attorney David Hallin had told the defendant she could charge a management fee for certain properties. Respondent stated, "I'm going to call Mr. Hallin and find out if she went to him or not. Somebody is going to pay a lot of fees for this [violating the prior court order]. CR 11. Do you know anything about Mr. Hallin telling her to start collecting this? I'm going to call him right now and find out." Court was recessed. In a telephone conversation solely between Mr. Hallin and Respondent, Respondent asked about Mr. Hallin's contacts with the defendant. Respondent subsequently informed the parties, off the record, that the conversation had occurred but the substance of the

1 conversation was not placed on the hearing record.

2 3. Under the Code of Judicial Conduct, a judge must not initiate or consider
3 unauthorized ex parte or other communications concerning a pending or impending proceeding.
4 Failing to observe this standard is a violation of Canons 1, 2(A) and 3(A)(4) of the Code of
5 Judicial Conduct.¹

6 4. Upon being contacted by the Commission, Respondent promptly replied to its
7 inquiries. Respondent admitted telephoning and talking with the attorney. The conversation or
8 the substance of the conversation was not placed in the trial record. Respondent admitted that it
9 was a mistake to have initiated the contact, that he had become too involved in the case, and
10 accepted responsibility for violating the Code. Respondent was cooperative with the Commission,
11 and explained he had not intended to violate any Code provision. Respondent has no history of
12 prior disciplinary action.

13 5. Respondent agreed to avoid initiating or considering ex parte communications in
14 the future.

15 **AGREEMENT**

16 1. Based upon the stipulated facts, Respondent agrees that while a Judge of the
17 Cowlitz Superior Court he violated Canons 1, 2(A) and 3(A)(4) of the Code of Judicial Conduct

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19 ¹ CANON 1 - JUDGES SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

20 An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing,
21 maintaining, and enforcing high standards of judicial conduct and shall personally observe those standards so that the integrity and
22 independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

23 CANON 2 - JUDGES SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL THEIR
24 ACTIVITIES

25 (A) Judges should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity
26 and impartiality of the judiciary.

27 CANON 3 - JUDGES SHALL PERFORM THE DUTIES OF THEIR OFFICE IMPARTIALLY AND DILIGENTLY.

28 The judicial duties of judges should take precedence over all other activities. Their judicial duties include all the duties of office
prescribed by law. In the performance of these duties, the following standards apply:

(A) Adjudicative Responsibilities.

... (4) Judges should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard
according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending
or impending proceeding. ...

1 by engaging in improper ex parte communications.

2 2. Respondent agrees to accept a written admonishment of an advisory nature as
3 described in RCW 2.64.010(1) and CJCRP *Terminology* and Rule 6.

4 3. Respondent agrees that he will exercise caution to avoid repeating the violation.

5 4. In accepting this stipulation, the Commission takes into account Respondent's
6 cooperation with the Commission's investigation and his acknowledgment of the violation.

7 5. Respondent states that he has either consulted or had an opportunity to consult
8 with counsel of his choosing regarding this stipulation and proceeding. Respondent voluntarily
9 enters into this stipulation.

10 6. Respondent agrees that by entering into this Stipulation and Agreement he hereby
11 waives his procedural rights and appeal rights pursuant to the Commission on Judicial Conduct
12 Rules of Procedure and Article IV, Section 31 of the Washington State Constitution in this
13 proceeding.

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Don L. McCulloch
Honorable Don L. McCulloch, Respondent

9/24/2001
Date

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David Akana
David Akana, Counsel
Commission on Judicial Conduct

9/26/2001
Date

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**STIPULATION, AGREEMENT AND
ORDER OF ADMONISHMENT - 3**

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ORDER OF ADMONISHMENT

Based upon the above stipulation and agreement, the Commission on Judicial Conduct hereby ORDERS, and Judge Don L. McCulloch, Respondent, is hereby ADMONISHED for violating Canons 1, 2(A) and 3(A)(4) of the Code of Judicial Conduct. Respondent shall exercise caution to avoid repeating the violation in the future.

DATED this 5 day of October, 2001.


Hon. Dale B. Ramerman, Presiding Officer
Commission on Judicial Conduct