

FILED

NOV 22 2002

COMMISSION ON JUDICIAL CONDUCT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

IN RE THE MATTER OF
The Honorable Heather K. Van Nuys,
Judge of the
Yakima County Superior Court
128 N. 2nd Street
Yakima, WA 98901-2639

No. 3842-F-101

**STIPULATION, AGREEMENT AND
AGREED ORDER OF CENSURE
WITH RECOMMENDATION OF
SUSPENSION**

The Commission on Judicial Conduct and Heather K. Van Nuys, Judge of the Superior Court for Yakima County, do hereby stipulate and agree as provided herein pursuant to Washington State Constitution Article IV, Section 31. CJCRP 23. This stipulation shall not become effective until approved by the Washington Commission on Judicial Conduct.

STIPULATED FACTS

1. Heather K. Van Nuys, Respondent, has served on the Yakima County Superior Court bench since August 1, 1988. Respondent was a judge of the Yakima County District Court from January 1983 to August 1988.

2. Respondent has stipulated in prior CJC Case No. 3754-F-99 filed by the Commission (attached, incorporated by reference) that she unduly delayed filing decisions in two civil cases, cases 95-2-02772-4, and 97-2-00957-9, in violation of Canon 3(A)(6), covering the time period of September 25, 1997 to April 29, 2002.

3. The Commission commenced an investigation pursuant to its constitutional authority based on new information the Commission received following the publication of CJC No. 3754-F-99. This information would support a

1 determination that Respondent has violated the Code of Judicial Conduct.
2 Respondent does not dispute that the Commission, if it can establish violations of
3 the Code, can take appropriate action under Article IV, Section 31, of the
4 Washington Constitution.

5 4. Respondent, throughout the period of delay covered by the cases
6 cited in CJC No. 3754-F-99, signed affidavits each month indicating that no case
7 assigned to her was more than ninety (90) days from readiness for decision without
8 a decision having been issued. These affidavits were titled "Affidavit for Payment of
9 Salary of Superior Court Judge." The judges' staff and payroll staff for the county
10 considered these affidavits a prerequisite for monthly payment of judicial salaries.
11 Were the matter to go to hearing, Respondent would testify that she signed these
12 affidavits affected by her psychological condition, and did not consciously consider
13 that she was signing each one to receive her monthly paycheck in timely fashion.
14 The Commission would contest this in the event of a hearing. Respondent
15 acknowledges that it is her responsibility to be aware of what she signs.

16 5. Were the matter to go to hearing, the Commission would produce
17 evidence of at least twelve other cases of late decisions, in addition to the cases
18 referenced in CJC No. 3574-F-99, and evidence that Respondent filed affidavits on
19 a monthly basis averring timely decisions in those cases during the period decisions
20 in those cases were late. The Commission's evidence would show that
21 Respondent had cases that were unduly delayed as early as 1994. Most of these
22 cases were domestic relations cases; several of them were other types of civil
23 litigation. The Respondent would produce evidence to show only three cases were
24 decided late, and that she signed approximately 55 affidavits during that time.

25 6. The purpose served by having judges sign the "Affidavit for Payment
26 of Salary of Superior Court Judge" is to assure the timely disposition of litigants'
27 disputes. Delay in dispute resolution adversely affects litigants' rights, and also can
28 have negative impact upon the attorneys, other judicial officers, and the efficient

1 administration of the court.

2 7. Respondent filed affidavits stating she was in compliance with laws
3 requiring her decisions to be timely when in fact there were cases which were more
4 than 90 days old. The parties agree that apparent technical deficiencies in the
5 form of the affidavits take them outside the ambit/context of the criminal offenses of
6 false swearing and/or perjury. (Further, the parties note that the law requiring
7 judges to file affidavits prior to receipt of payment was amended in 1997. Because
8 of this amendment, the Commission did not know when respondent entered the
9 stipulation in CJC No. 3754-F-99 that such affidavits were signed by Yakima
10 County Superior Court judges after 1997.) Respondent agrees that statements
11 contained in the affidavits were not true and that she should not have signed or
12 submitted them. Respondent admits that the signing of such declarations by a
13 judge is a serious violation of judicial ethics and of her responsibility to be truthful
14 as a judge.

15 **Aggravating/Mitigating Factors**

16 In entering this stipulation, the Commission takes into account the following
17 aggravating and mitigating factors:

18 **A. Aggravating Factors:**

19 1. Evidence of a Pattern of Conduct

20 This is not an isolated incident. Respondent has filed affidavits comprised of
21 untrue statements on a monthly basis for at least four and a half years and for as
22 long as eight years.

23 2. Nature of Misconduct

24 Respondent admitted that she filed approximately fifty-five untrue affidavits
25 averring she was in compliance with laws requiring her decisions to be timely when
26 in fact, she was not. The Yakima Superior Court system required these affidavits
27 from judges as a prerequisite to timely payment of their salaries. A judge filing
28 untrue affidavits creates substantial harm to the integrity of and respect for the

1 judiciary.

2 3. Whether the Behavior Took Place in the Courtroom

3 Although the misconduct did not happen from the bench, it did occur in the
4 judge's official capacity, and concerns conduct central to her judicial duties.

5 4. Have the Acts of Misconduct Caused Injury to Others

6 The purpose of the monthly affidavits is to ensure timely decision making, in
7 order to protect litigants' rights and the smooth operation of the court.

8 5. Personal Gain

9 The judge's signing of affidavits for payment of salary facilitated timely
10 payment of her salary, which otherwise would have been delayed.

11 6. Effect the Misconduct has upon the Integrity of and Respect for the
12 Judiciary

13 Truthfulness under oath is an indispensable requirement of the justice
14 system. A judge's lack of truthfulness under oath damages the integrity of the
15 judiciary.

16 7. Prior Disciplinary Action Against the Judge

17 While there has been prior disciplinary action against the judge, it was so
18 related to the subject of the present complaint and Commission case as to be
19 neither an aggravating nor a mitigating factor.

20 **B. Mitigating Factors**

21 1. Whether the Judge has Acknowledged the Acts.

22 The judge acknowledges that the acts occurred.

23 2. Whether the Judge Cooperated with the Commission Investigation
24 and Proceeding

25 The judge has been very cooperative with the Commission investigation and
26 proceeding.

27 3. Other Mitigating Factors

28 The Respondent's behavior was impacted by personal emotional difficulties

1 alluded to in 3754-F-99 and she has taken active measures to address those
2 issues. The other mitigating factors referenced in that case are also taken into
3 account in this resolution.

4 **AGREEMENT**

5 1. Based upon the foregoing stipulated facts, Respondent and the
6 Commission agree that if a contested hearing were held on this matter, the
7 Commission could find that Respondent violated Canons 1, 2(A), 3(A)(1) and
8 3(A)(6) of the Code of Judicial Conduct and these findings could merit the sanction
9 of censure with suspension without pay for two (2) months.

10 2. This stipulation and agreement is intended to cover all delay and
11 affidavit issues arising from her judicial service up to and including the completion
12 of the cases cited in CJC Case No. 3754-F-99.

13 3. Respondent agrees and stipulates to the acceptance of a censure
14 and to comply with the corrective terms and conditions set forth in CJC No. 3754-
15 F-99. A censure is a written action of the Commission that finds the conduct of the
16 Respondent violates a rule of judicial conduct, detrimentally affects the integrity of
17 the judiciary, and undermines public confidence in the administration of justice.

18 4. Respondent agrees to a suspension from office without pay with an
19 effective date of no later than February 1, 2003, and to suspension of her judicial
20 duties for a period of two (2) consecutive months (60 days), upon acceptance of
21 this stipulation ^{by} of the Commission on Judicial Conduct and approval of the State
22 Supreme Court.

23 5. The Commission and Respondent acknowledge that this stipulation is
24 a joint recommendation to the State Supreme Court and that the Supreme Court
25 may adopt this recommendation or a different resolution of this matter based on
26 this stipulation. In arriving at this agreement, the parties took into consideration
27 case law from other jurisdictions, including, e.g., *In re Waddick*, 232 Wis. 2d 733;
28 605 N.W.2d 861 (2000), *In re Dreyfus*, 182 Wis. 2d 121; 513 N.W.2d 604 (1994),

1 and *In re Gerard*, 631 N.W.2d 271 (2001).

2 **Standard Additional Terms Of Commission Stipulation**

3 6. Respondent further agrees that she will not retaliate against any
4 person known or suspected to have cooperated with the Commission, or otherwise
5 associated with this matter.

6 7. Respondent agrees that by entering into this stipulation and
7 agreement, she hereby waives her procedural rights and appeal rights pursuant to
8 the Commission on Judicial Conduct Rules of Procedure and Article IV, Section 31,
9 of the Washington State Constitution, in this proceeding.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

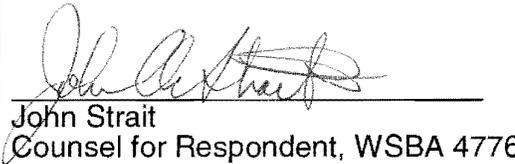
26

27

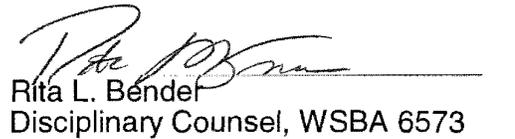
28


Heather K. Van Nuys

Dated: Nov. 16, 2002


John Strait
Counsel for Respondent, WSBA 4776

Dated: Nov 18, 2002


Rita L. Bender
Disciplinary Counsel, WSBA 6573

Dated: November 18, 2002

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

IN RE THE MATTER OF

The Honorable Heather K. Van Nuys,
Judge of the
Yakima County Superior Court
128 N. 2nd Street
Yakima, WA 98901-2639

No. 3842-F-101

ORDER OF CENSURE

Based upon the "Stipulation, Agreement and Agreed Order of Censure with Recommendation of Suspension," the Commission on Judicial Conduct hereby Orders and Judge Heather K. Van Nuys is hereby CENSURED for violating Canons 1, 2(A) and 3(A)(1 and 6) of the Code of Judicial Conduct. Respondent shall fulfill all of the terms of the stipulation and agreement as set forth therein.

Dated this 22 day of November, 2002.


Margo T. Keller, Chair
Commission on Judicial Conduct

FILED
JUN 7 2002
COMMISSION ON JUDICIAL CONDUCT

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In Re the Matter of) NO. 3754-F-99
)
Heather K. Van Nuys, Judge of the)
Yakima County Superior Court)
129 N. 2nd Street)
Yakima, WA 98901-2639)

**STIPULATION, AGREEMENT,
AND AGREED ORDER OF
ADMONISHMENT**

The Commission on Judicial Conduct and Heather K. Van Nuys, Judge of the Superior Court for Yakima County, do hereby stipulate and agree as provided for herein pursuant to CJCRP 23. This stipulation shall not become effective until approved by the Washington Commission on Judicial Conduct.

I. STIPULATED FACTS

1. Heather K. Van Nuys, Respondent, has served on the Yakima County Superior Court bench since August 1, 1988.

2. The Commission commenced an investigation pursuant to its constitutional authority based on information concerning Respondent. The information, supplemented by Respondent's self-report to the Commission, would support a determination that Respondent violated the Code of Judicial Conduct. Respondent does not dispute that the Commission, if it can establish violations of the Code, can take appropriate action under Article IV, Section 31 of the Washington Constitution.

3. Respondent presided as trial judge in a civil case, 95-2-02772-4, in May and June of 1997. She issued a preliminary letter opinion on December 3,

1 1997. She did not render her final detailed opinion until April 22, 2002, although
2 counsel for the parties sent several letters of inquiry and the Clerk of the Court
3 discussed the need for a resolution of the case with Respondent.
4

5 4. While this case was pending, personal events increasingly consumed
6 more of Respondent's attention. Respondent suffered the loss of her stepmother a
7 few weeks after the trial in the civil case. Concurrently, Respondent was attending
8 to the daily living needs of an infirm elderly loved one from the time the case was
9 ready for decision until May 7, 2000, when the loved one died in Respondent's
10 home. During this time period, the necessary level of care steadily increased
11 culminating in intensive hospice care in Respondent's home, and eventually ended
12 in the loved one's death. Over this extended period, the care-giving process was
13 physically exhausting and emotionally draining to Respondent. The eventual death
14 was devastating to Respondent. As a direct result of the care giving and these
15 losses, Respondent became emotionally unable to give the case the concentrated
16 effort necessary to render a final decision until April 22, 2002.
17
18

19 5. In entering this stipulation, the Commission takes into account several
20 pertinent factors:

21 A. Aggravating factors including:

22 (1) The length of service of the judge in a judicial capacity.

23 Respondent has been a judge of the Yakima District Court from January 1983 to
24 August, 1988 when she became a judge of the Yakima County Superior Court.
25

26 (2) There were, in all, two similar acts involving lengthy delay.

27 B. Mitigating factors including:
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(1) The physical and emotional demands placed on the Respondent associated with in-home hospice care and death, together with related grief and depression coinciding with, and contributing toward, the delay.

(2) Her prompt completion of the civil case No. 95-2-02772-4 after an inquiry by the Commission's staff.

(3) Her immediate self-report of a similar matter (Cause No. 97-2-00957 9), apparently the product of the same emotional demands associated with in-home care of a loved one, and losing track of the case due to her reassignment to juvenile court in 2000 and the refurbishing of her chambers. After locating the case, she promptly completed it, filing her ruling on April 29, 2002.

(4) Her full cooperation with the Commission from the inception of the Commission's contact with her.

(5) Her immediate acceptance of responsibility for her violation of Canons 1, 2(A) and CJC 3(A)(6);

(6) Her demonstration of sincere and substantial remorse reflected in her letters to affected counsel and the Commission's staff;

(7) Her prompt steps to immediately correct and improve her performance including:

- a. Prompt completion of the delayed opinions;
- b. Her enrollment in additional training regarding judicial decision-making at the National Judicial College;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- c. Her entry into treatment for grief and depression;
 - d. Her administrative arrangements for secondary check on pending decisions through her Clerk's Office and independent reporting to her Presiding Judge;
- (8) The impact of her misconduct affected relatively few persons;
- (9) The lack of any personal benefit, criminal conduct or dishonesty in the violations;
- (10) The lack of any prior discipline; and
- (11) Her previous contributions to the judiciary and her reputation as a jurist. See Attachment A.

II. AGREEMENT

1. Based upon the foregoing stipulated facts, Respondent and the Commission agree that if a contested hearing were held on this matter the Commission could find by clear, cogent and convincing evidence that Respondent violated Canons 1, 2(A) and 3(A)(6) of the Code of Judicial Conduct and these findings, with mitigation, could merit a disciplinary sanction for a sitting judge.

2. Respondent agrees to accept a written admonishment as described in RCW 2.64.010(1), CJCRP *Terminology* and Rule 6.

3. Respondent has enrolled in and agrees to attend the National Judicial College course of "Decision-Making" in 2002. Upon satisfactory completion of that, Respondent shall file a declaration with the Commission that the course was completed.

1 4. Respondent agrees and stipulates that she will continue the
2 counseling she is currently receiving until such time as her therapist and she agree
3 that further counseling is no longer required to assure there will be no similar
4 causes of delay.
5

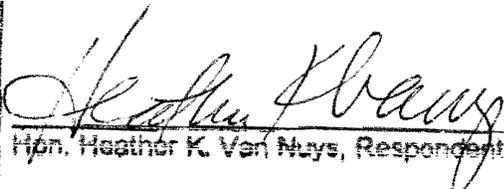
6 5. Respondent agrees she will maintain and report a list of cases taken
7 under submission by her with the Clerk's Office for the Yakima County Superior
8 Court, which may be reviewed by Commission staff. She agrees she will report any
9 case she has pending more than 45 days directly to her Presiding Judge. At the
10 time any case is taken under submission, she agrees she will set a resolution date
11 by order, file the order and provide a copy to the parties.
12

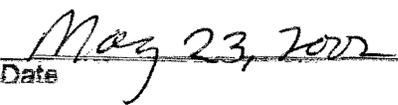
13 6. Respondent agrees she is voluntarily entering into this stipulation.

14 **STANDARD ADDITIONAL TERMS OF COMMISSION STIPULATION**

15 7. Respondent further agrees that she will not retaliate against any
16 person known or suspected to have cooperated with the Commission, or otherwise
17 associated with this matter.
18

19 B. Respondent agrees that by entering into this stipulation and
20 agreement she hereby waives her procedural rights and appeal rights pursuant to
21 the Commission on Judicial Conduct Rules of Procedure and Article IV, Section 31,
22 of the Washington State Constitution in this proceeding.
23

24
25
26 
27 Hon. Heather K. Van Nuys, Respondent

26 
27 Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

John Strait
John Strait
Counsel for Respondent, WSBA #4776

5/23/2002
Date

David Akana
David Akana, Executive Director and
Counsel for Commission on Judicial Conduct
WSBA #5523

5/30/2002
Date

III. ORDER OF ADMONISHMENT

Based upon the above stipulation and agreement, the Commission on
Judicial Conduct hereby orders and Judge Heather K. Van Nuys is hereby
ADMONISHED for violating Canons 1, 2(A) and 3(A)(6) of the Code of Judicial
Conduct. Respondent shall fulfill the terms of the agreement as above set forth.

Dated this 7th day of JUNE, 2002.

COMMISSION ON JUDICIAL CONDUCT

Margo T. Keller
Margo T. Keller, Chair
K. COLLINS SPRAGUE, VICE-CHAIR

Heather K. Van Nuys
Recent Activities

JUDICIAL EDUCATOR

Washington State Judicial College

- Served as Superior Court Dean of the Washington State Judicial College, 1995 and 2001
- Faculty for the State Judicial College for many years; Courses have included: Ethics, Family Law, Court Interpreters, Jury Trial, Bias and Fairness Issues in Court

Faculty for Superior Court Spring Conference:

- 2001: Settlement Conference Ethics (AJS Curriculum)
- 2000: Case Settled! (2 ½ day mediation program)
- 1999: Effective Settlement Conferences
- Education Chair, Superior Court Spring Conference, 1993

Faculty for District and Municipal Court Spring Conference:

- Jury Trials (1996)
- Domestic Violence (1993)

Faculty for Washington State Judicial Fall Conference (all court levels):

- "When Judges Speak Up: Ethics, the Public and the Media" (AJS Curriculum), 1998
- Panelist: Interpreters in Rural Courts (2001)

Faculty at the National Judicial College, 1994- 1999, teaching in the General Jurisdiction program.

- Courses include: Ethics; Fair Trial – Free Press; Media and the Courts; Courts and the Community; *Pro Se* Litigants; Using Court Interpreters; Role of Judge. Most recently working with NJC to develop courses for their "distance learning" program, on-line courses (2002).

Other Judicial Teaching:

- Faculty, Regional seminars: Domestic Violence for Rural Courts
- Faculty, District and Municipal Court Manager's Association Regional Seminar: "Ethics and the Court Employee" (2000)
- Panelist, American Bar Association Convention, Judicial Administration Division, "Race and Bias Issues in Courts" (1994)

JUDICIAL BOARDS, COMMISSIONS, and COMMITTEES

- Member, Board for Court Education (BCE) since 2001
- Member, Fall Judicial Conference Planning Committee, 2002, 2003
- Member of Washington Jury Reform Commission, chairing a subcommittee, 1999-2000
- Member, Court Interpreter Commission (since inception, and its predecessor task force since inception); formerly chaired the certification subcommittee; currently chair the judicial education subcommittee
- Original member, Minority and Justice Task Force (predecessor to Minority and Justice Commission)
- Former District Director and member of the Board of Directors, National Association of Women Judges; Served as the education chair for a national conference for the National Association of Women Judges

OTHER SERVICE

- Contributing author, "Rural Courts" chapter, Domestic Violence bench book
- Team member to develop the national bench book *"Immigrants and the Courts"*, American Bar Association, 1997
- Authored *Pro Tem Judges Bench Book* for Yakima County Superior Court
- Presiding Judge, Yakima County Superior Court, 1997
- Participated in producing video tape "Using Court Interpreters" for National Center for State Courts (1995)

Recent Bar-related activities:

- Panelist, "Jury Reform" at Washington State Trial Lawyers Convention, 2001
- CLE Speaker, "Using Interpreters Effectively," Yakima County Bar Association, 2002
- Founding member, John Gavin Inn of Court, Yakima
- *Upcoming:* Access to Justice Conference, June 7-9, 2002; panelist in two sessions: Mediation and Language and Cultural Issues for Serving Ethnically Diverse Communities

Community activities:

- KYVE-TV (PBS station) Advisory Board (approximately 1984 to present; former chairperson of the board)
- Served on Advisory Board of Goodwill Industries
- Served on Board of Directors, Prime Time Camp (summer camp for terminally ill children)