

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

FILED

FEB - 7 2003

COMMISSION ON JUDICIAL CONDUCT

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4 In Re the Matter of:

5 The Honorable Jay F. Wisman, Judge
6 Snohomish County District Court
7 Cascade Division
8 415 East Burke
9 Arlington, Washington 98223

No. 3841-F-104

**STIPULATION, AGREEMENT
AND
ORDER OF ADMONISHMENT**

10 The Commission on Judicial Conduct and the Honorable Jay F. Wisman, judge
11 of the Snohomish County District Court Cascade Division, Arlington, Washington,
12 hereby stipulate and agree as provided for pursuant to CJCRP 23. This stipulation shall
13 not become effective until approved by the Washington Commission on Judicial
14 Conduct.

15 **STIPULATED FACTS**

- 16 1. The Honorable Jay F. Wisman was at all times discussed herein a judge
17 of the Snohomish County District Court Cascade Division, Arlington, Washington.
- 18 2. Judge Wisman agrees that he has made an opening statement at the
19 beginning of each traffic infraction mitigation calendar in which he informs the
20 respondents that he will base his decision whether to grant a reduction in penalty solely
21 on the respondents' traffic records, and not on any statement they might make. Judge
22 Wisman's statement informs the audience that the reason for this practice is that he
23 finds using a person's statement as the standard upon which to decide whether a
24 reduction is justified is not a fair standard. E.g., Court tape of February 26, 2002.
- 25 3. RCW 46.63.100 provides that a person is allowed and the court is to hear
26 the explanation of the "circumstances surrounding the commission of the infraction. . . ."

1 Judge Wisman's practice does not follow the statute.

2 4. Judge Wisman's position is that some people are too nervous to make a
3 statement, and others, although articulate, may have poor to horrible traffic records.
4 He explains that he has never intentionally denied a respondent's request to explain the
5 circumstances. However, he reminds respondents he will base his decision to reduce
6 the penalty solely upon the respondent's traffic record.

7 5. Judge Wisman agrees that by making this opening statement some
8 people who wished to offer a statement may have changed their minds and refrained
9 from doing so.

10 AGREEMENT

11 1. Based upon the stipulated facts, Judge Wisman agrees that, as
12 Snohomish County District Court Cascade Division Judge, he violated Canons 2(A),
13 3(A)(1) and 3(A)(4) of the Code of Judicial Conduct by engaging in a practice that
14 discouraged respondents in his court a meaningful right to be heard in the manner they
15 are entitled under state law in traffic infraction mitigation hearings.

16 2. Under the Rules of the Commission and case law, there are fourteen non-
17 exclusive factors the Commission must consider in determining the appropriate sanction
18 for a violation of the Code of Judicial Conduct. The relevant aggravating and mitigating
19 factors in this matter are:

20 a. Whether the misconduct is an isolated instance or evidence of a
21 pattern of misconduct

22 The conduct is not an isolated instance, but a policy or practice
23 which Judge Wisman followed for several years.

24 b. The nature, extent, and frequency of occurrence of the acts of
25 misconduct

26 For several years, Judge Wisman did not provide respondents in
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traffic infraction cases with the type of mitigation hearing to which they were statutorily entitled.

c. Whether the misconduct occurred in or out of the courtroom

All of the misconduct occurred in the courtroom.

d. Whether the misconduct occurred in the judge's official capacity or in the judge's private life

All of the misconduct occurred in the judge's official capacity.

e. The nature and extent to which the acts of misconduct have been injurious to other persons

Judge Wisman's policy denied a large number of respondents the type of mitigation hearing to which they were statutorily entitled. However, in a mitigation hearing, the respondent admits that he or she committed the infraction, so Judge Wisman's practice did not result in any erroneous findings of committed infractions. Further, the penalty for an infraction is a relatively minor sum of money, and does not involve any potential for loss of liberty.

f. The extent to which the judge exploited the judge's official capacity to satisfy personal desires

There is no evidence that Judge Wisman exploited his office to satisfy his personal desires.

g. The effect the misconduct has upon the integrity of and respect for the judiciary

Judge Wisman's failure to comply with the law governing infraction mitigation hearings disappointed respondents' justifiable expectations regarding the type of hearings they would be provided. His prompt acknowledgment of these concerns and correction of his practice, coupled

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with the nature of the hearings as outlined in aggravating/mitigating factor “e” above, lead to the conclusion that the misconduct was not so serious as to impair the integrity of or respect for the judiciary.

h. Whether the judge has acknowledged or recognized that the acts occurred

Judge Wisman acknowledges that the acts occurred and that he violated the Code of Judicial Conduct.

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

Judge Wisman has already modified his mitigation hearing practice by announcing that all respondents may make a statement explaining the circumstances of the infraction and that he will take those circumstances into consideration in deciding whether a reduction in the fine is justified.

j. The judge’s length of service in a judicial capacity

Judge Wisman has been a judge for 25 years. Under the circumstances, his length of service is neither mitigating nor aggravating.

k. Whether there has been prior disciplinary action concerning the judge

Judge Wisman has no previous disciplinary actions.

l. Whether the judge cooperated with the commission investigation and proceeding

Judge Wisman has been cooperative with the Commission investigation and proceeding, and has already modified his mitigation hearing practice by announcing that all respondents may make a statement explaining the circumstances of the infraction and that he will take those circumstances into consideration in deciding whether a

1 reduction in the fine is justified.

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

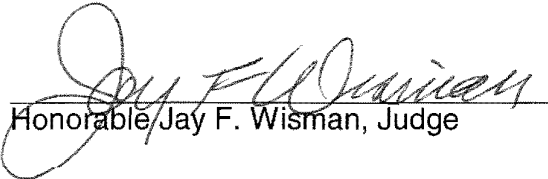
4 4. In accepting this stipulation, the Commission takes into account Judge
5 Wisman's cooperation with the Commission's investigation and his acknowledgment of
6 the violation.

7 Standard Additional Terms

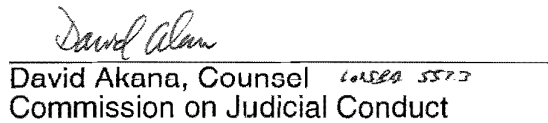
8 5. Judge Wisman agrees further that he shall not engage in any retaliatory
9 conduct with regard to any person known or suspected to have cooperated with the
10 Commission, named as a potential witness in this matter, or otherwise associated with
11 this proceeding.

12 6. Judge Wisman represents that he has either consulted or had an
13 opportunity to consult with counsel of his choosing regarding this stipulation and
14 proceeding. Respondent voluntarily enters into this stipulation.

15 7. Judge Wisman agrees that by entering into this Stipulation and Agreement
16 he hereby waives his procedural rights and appeal rights pursuant to the Commission
17 on Judicial Conduct Rules of Procedure and Article IV, Section 31 of the Washington
18 State Constitution in this proceeding.

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20 
Honorable Jay F. Wisman, Judge

1/22/2003
Date

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22 
David Akana, Counsel 60580 5573
Commission on Judicial Conduct

1/23/2003
Date

1 **ORDER OF ADMONISHMENT**

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

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8 DATED this 7th day of February, 2003.

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11 Margo T. Keller
12 Margo T. Keller, Chair
13 Commission on Judicial Conduct

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