

FILED
JUN 18 2004
COMMISSION ON JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In re the Matter of HONORABLE MARY
ANN OTTINGER, Judge

CJC No. 3811-F-¹¹⁰~~109~~

King County District Court
East Division

STIPULATION, AGREEMENT AND
ORDER OF CENSURE

The Commission on Judicial Conduct and the Honorable Mary Ann Ottinger, Judge of the King County District Court, East Division, stipulate and agree as provided herein. This stipulation is submitted pursuant to the Washington Constitution, Article IV, Section 31 and CJC RP 23, and shall not become effective unless and until approved by the Washington Commission on Judicial Conduct.

The Commission on Judicial Conduct is represented in these proceedings by its disciplinary counsel, Paul Taylor. The Honorable Mary Ann Ottinger is represented by Anne Bremner.

I. STIPULATED FACTS

A. Pattern or Practice of Failing to Observe Defendants' Fundamental Due Process Rights

1. The Honorable Mary Ann Ottinger, Respondent, was at all times discussed herein a judge of the King County District Court (KCDC), assigned to what is now the East Division of that court. Prior to the reorganization of the KCDC in 2002, she served as the sole judge in the Issaquah District Court where she was first appointed in 1992.

2. In the case of the State v. Sara Totten, 183992A, Respondent failed on multiple occasions to properly advise the unrepresented defendant of her right to court-appointed counsel. Respondent failed to advise defendant of the elements of the crime, of the maximum

1 available penalties and other potential consequences of conviction, and failed to utilize a
2 written statement of defendant on plea of guilty form, as required by CrRLJ 4.2. Respondent
3 similarly failed to advise unrepresented defendants of their due process rights in numerous
4 other cases.

5 3. The Commission contacted Respondent with concerns about the adequacy of
6 her rights advisement procedures in 2002. In response, Respondent represented that she
7 would correct her plea acceptance and rights advisement practices in the future to comply
8 with CrRLJ 4.2 and Washington law.

9 4. Respondent thereafter continued to improperly advise defendants of their rights
10 prior to requiring defendants to enter a plea. Specifically, Respondent routinely failed to
11 advise unrepresented defendants of various rights, including but not limited to: (i) the perils
12 of proceeding without counsel, (ii) the right to remain silent, and that anything the accused
13 says may be used against him or her. Respondent also failed to orally make a determination
14 of probable cause prior to imposing conditions of pretrial release (CrRLJ 3.2.1(e)(2)). While
15 Respondent would subsequently advise a defendant who pled guilty that such plea would not
16 be accepted until a later hearing to afford the opportunity to consult counsel, she
17 acknowledges that this practice is inconsistent with CrRLJ 4.2 and that, as noted by the State
18 Supreme Court in *In re Hammermaster*, 139 Wn.2d 211, 236 (1999):

19 The law is clear that a judge has a duty to ensure that guilty pleas
20 are knowingly, voluntarily, and intelligently made. *Boykin v.*
21 *Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969).
22 At a minimum, this requires the defendant be apprised of the
23 essential elements of the offense as well as any mandatory
24 minimum sentence and the statutory maximum. *State v.*
25 *Holsworth*, 93 Wash. 2d 148, 607 P.2d 845 (1980).
26

1 B. Improper Provision of Legal Assistance to a Municipality.

2 5. Respondent improperly provided legal assistance to the City of Issaquah, and
3 other municipalities she serves as a KCDC judge for the East Division, in their dispute with
4 King County related to the reorganization and utilization of judicial resources for her division.
5 In addition to providing research and legal advice, Respondent secretly "ghost wrote"
6 correspondence for the City of Issaquah to be submitted to King County without reference or
7 attribution to her. She also actively urged the City of Issaquah to sue King County.

8 C. Intemperate Treatment of Court Staff.

9 6. The Commission has information that it believes would tend to prove that
10 Respondent violated Canon 3(A)(3) in her intemperate treatment of court staff members.
11 Respondent denies this occurred. Both parties agree, in lieu of litigating the matter, that
12 Respondent shall undergo management training as provided herein.

13 **II. AGGRAVATING/MITIGATING FACTORS**

14 In accepting this stipulation, the Commission has taken into account the following
15 aggravating and mitigating factors:

16 a. Whether the misconduct is an isolated instance or evidence of a pattern of
17 misconduct.

18 The conduct described in Paragraph 1A was not an isolated incident and constituted a
19 policy or practice that Respondent has followed for years.

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

21 The nature, extent and frequency of the due process violations, in particular, have been
22 significant. Hearing tapes suggest that the deficient due process advisement practices were
23 routine for Respondent. Because the practices implicate the Constitutional rights of the
24 defendants involved, the nature of the violations cannot be overstated.

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

3 The due process advisement practices in question were conducted in the courtroom.
4 The remainder of the above conduct occurred outside the courtroom, but was still closely
5 associated with Respondent's professional duties.

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

8 All of the conduct occurred in the judge's official capacity.

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

11 The extent to which Respondent's failure to properly advise defendants of their rights has
12 had a substantial impact on the rights of the defendants involved. For example, Sara Totten, then
13 19 years of age and without any other criminal record, was ultimately ordered to spend a year in
14 jail on an original charge of minor in possession of alcohol. Respondent's actions in providing
15 clandestine legal advice to municipalities, in itself constituting the improper practice of law,
16 exacerbated the conflict inherent in the redistribution of resources in the court system.

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

19 Respondent's position is that her legal assistance to the City of Issaquah in its dispute
20 with King County was not motivated by any personal desires. Respondent's position is that she
21 was motivated by her perceived obligation to the people of Issaquah who originally voted for
22 her. Such motivation does not, however, entitle her to engage in the practice of law, which is
23 prohibited for a full-time judge, nor does it override her responsibilities to the King County
24 District Court.

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

26 Protecting the rights of accused individuals is one of the highest duties of any judicial
officer. Respondent's failure to adequately perform that duty calls into question the integrity of

1 her office. In addition, judicial officers are required to protect the appearance of their
2 impartiality.

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

4 Respondent acknowledges that the acts occurred and that she violated the Code of
5 Judicial Conduct.

6 i. Whether the judge cooperated with the Commission investigation and proceeding.

7 Respondent has cooperated in the negotiation of this Stipulation and Agreement.

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

9 Under the terms of this Stipulation and Agreement, Respondent acknowledges her
10 need to change or modify the conduct in question and represents that she will do so, consistent
11 with the requirements listed further below.

12 k. The judge's length of service in a judicial capacity.

13 Respondent has served on the bench for 12 years.

14 l. Whether there has been prior disciplinary action concerning the judge.

15 Respondent has no previous disciplinary actions.

16 III. AGREEMENT

17 1. Respondent stipulates that the conduct described above violated Canons 1, 2,
18 and 3 (A)(1) of the Code of Judicial Conduct.

19 2. Respondent stipulates that based upon such conduct, the Commission could
20 impose a sanction in accordance with these rules.

21 3. Respondent stipulates to the acceptance of an order of censure. A censure is a
22 written action of the Commission that finds that the conduct of the Respondent violates a rule
23 or rules of judicial conduct, detrimentally affects the integrity of the judiciary, and
24 undermines public confidence in the administration of justice.

25 4. Respondent agrees that she will participate in training, approved in advance by
26 the Commission, related to the proper administration of her court, including proper

1 procedures for rights advisement related to accepting pleas and imposing probationary terms
2 and conditions. Specifically, she will attend and complete coursework at the National Judicial
3 College, accredited law school or judicial seminar, or a similar institution/program in such
4 matters no later than one year from the date this stipulation is accepted by the Commission.
5 Respondent agrees she will complete such training at her own expense and will certify the
6 completion of such training in writing within a year of the acceptance of this Stipulation and
7 Agreement by the Commission.

8 5. Respondent further agrees that she will complete counseling at her own
9 expense approved in advance by the Commission to address her management practices. She
10 will likewise certify to the Commission within a year of the acceptance of this Stipulation and
11 Agreement that she has actively engaged in such counseling.

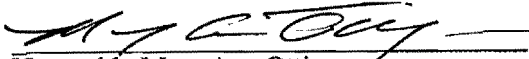
12 6. Respondent agrees and stipulates further that she shall not engage in any
13 retaliatory conduct with regard to any person known or suspected by her to have cooperated
14 with the Commission on Judicial Conduct, or otherwise associated with this matter.


15 7. Respondent and her counsel stipulate that they will make no statements
16 denying, or attempting to excuse or minimize, the conduct set forth herein.


17 8. Respondent stipulates further that by entering into this Stipulation, she hereby
18 waives any procedural and appeal rights pursuant to the Commission on Judicial Conduct
19 Rules of Procedure and Article IV, Section 31 of the Washington State Constitution in this
20 proceeding.

21 9. The Commission stipulates that in exchange for this agreement by Respondent,
22 and conditioned upon Respondent's fulfillment of the conditions of this Agreement, the
23 Commission will take no further action on any of the matters contained in its Statement of
24 Allegations dated July 2, 2003.

1 DATED this 30th day of April, 2004.

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3 
Honorable Mary Ann Ottinger

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6 Anne M. Bremner, WSBA #13269
Attorney for Respondent

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8 Paul R. Taylor, WSBA #14851
9 Disciplinary Counsel, Commission on
Judicial Conduct


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BEFORE THE COMMISSION ON JUDICIAL CONDUCT
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In re the Matter of HONORABLE MARY ANN OTTINGER, Judge)	CJC No. 3811-F-109
King County District Court)	ORDER OF CENSURE
Eastern Division)	

Based upon the annexed Stipulation and Agreement, the Commission on Judicial
Conduct hereby Orders Judge Mary Ann Ottinger CENSURED for violating Canons 1, 2, and
3 (A)(1) of the Code of Judicial Conduct. Respondent shall fulfill all of the terms of the
Stipulation and Agreement as set forth therein.

Dated this 18th day of JUNE, 2004.



K. Collins Sprague, Chair
Commission on Judicial Conduct