

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED

FEB - 6 2004

COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of:

The Honorable Randal B. Fritzler
Clark County District Court
1200 Franklin Street
Vancouver, Washington 98660

3933-F-107

**STIPULATION, AGREEMENT AND
ORDER OF CENSURE**

Disciplinary Counsel Steven Reisler for the Commission on Judicial Conduct and the Honorable Randal B. Fritzler, former Clark County District Court Judge (Respondent), representing himself, do hereby stipulate and agree as provided for herein. This stipulation is submitted pursuant to the Washington Constitution, Article IV, Section 31 and CJCRP 23, and shall not become effective until approved by the Washington Commission on Judicial Conduct.

The Commission on Judicial Conduct is represented in these proceedings by its counsel, Steven A. Reisler, and Respondent is representing himself. Respondent represents that he has either consulted or had an opportunity to consult with counsel of his choosing regarding this stipulation and proceeding. Respondent voluntarily enters into this stipulation.

STIPULATED FACTS

1. The Honorable Randal B. Fritzler, Respondent, was at all relevant times discussed herein, a judge of the Clark County District Court, Vancouver, Washington.
2. Respondent was previously censured by the Commission on Judicial Conduct for violating Canons 1, 2(A), 3(B)(1) and 3(D)(1)(a) of the Code of Judicial Conduct in CJC 95-2136-F-61, August 1996, when he engaged in a consensual sexual relationship with a court employee while continuing to preside over primarily uncontested matters in which the employee's spouse was attorney of record. Additionally, the relationship disrupted the administration of the court. In its order,

1 the Commission required Respondent to attend ethics training and to refrain from
2 repeating such violations in the future. (See Exhibit A, attached herein and
3 incorporated by reference.)

- 4 3. Respondent thereafter engaged in an intimate personal relationship with a Clark
5 County District Court employee. She was hired as a paid employee of the court in
6 March of 2001. Since the time of her hiring, rumors of Respondent's close personal
7 relationship with this employee and perceived favoritism based on that relationship
8 disrupted the orderly administration of the court workplace and adversely affected
9 morale for court employees, administrators, and fellow judicial officers. In the
10 course of Respondent's relationship with the court employee he secretly stayed with
11 her in hotel rooms in and outside of Washington State, in various locations over a
12 period of time, and had intimate physical contact with her. Respondent engaged
13 in this intimate relationship even though he was told by fellow judges and others that
14 there was an appearance of impropriety and favoritism in his relationship with her
15 that was destructive to the reputation of the court and the smooth operation of the
16 administration of its employees. This relationship with the court employee
17 specifically violated the Commission's order in CJC No. 95-2136-F-61 (August
18 1996).
- 19 4. On December 8, 2003, the Commission filed the present charges against
20 Respondent, charging he violated Canons 1, 2(A), 2(B), 3(A)(3), 3(B)(1), and 3(B)(3)
21 of the Code of Judicial Conduct.

22 **AGGRAVATING AND MITIGATING FACTORS**

23 In accepting this stipulation, the Commission has taken into account the following
24 aggravating and mitigating factors¹:

25 **A. Aggravating Factors:**

- 26 1. Whether the misconduct is an isolated incident or evidence of a pattern of

27 ¹CJCRP 6(c)
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1 misconduct; and whether there has been prior discipline against the judge

2 Respondent was previously censured by the Commission for similar acts of
3 misconduct. Censure is the most severe form of sanction available to the Commission to
4 impose on its own authority.

5 2. Nature, extent, and frequency of occurrence of the acts of misconduct

6 As in the prior instance of discipline against Respondent, he engaged in an
7 intimate relationship with a court employee who worked at times under his direct
8 supervision. Respondent was told of the adverse impact rumors of the relationship had
9 on the workplace. The relationship between Respondent and the court employee became
10 disruptive and impacted the court through distractions such as rumors and work
11 performance problems, wherein Respondent was perceived to treat the employee with
12 undue favoritism and to disfavor other employees in order to protect her. The misconduct
13 took place over a period of at least several months and on multiple occasions and in
14 multiple locations.

15 3. Whether the misconduct occurred in or out of the courtroom; and whether in
16 the judge's official capacity or in the judge's private life

17 The misconduct in this instance negatively combined Respondent's work and
18 personal conduct. The Code of Judicial Conduct is applied to a judge's personal conduct
19 when that conduct impacts the ability of the judge or others to properly discharge their
20 official duties or where the judge's personal conduct otherwise adversely reflects on the
21 judge's integrity of fitness for office. Most of the misconduct occurred outside of the
22 courthouse, though attorneys and court personnel perceived the appearance of a personal
23 relationship between the judge and the employee as they worked together in the
24 courtroom. The judge was one of those responsible for supervision of the employee. As
25 noted in prior CJC Case No. 95-2136-F-61, although the relationship was consensual,
26 "intimate relationships between individuals of such unequal power and such proximity are,
27 at best, ill-advised, and by their nature may impair the functioning of any work
28 environment."

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

4 Respondent's relationship with the court employee was a divisive issue among the
5 court staff and for the district court bench, heightening factionalism and antagonisms and
6 the perception of undue favoritism which was destructive to morale at the courthouse.
7 Respondent has acknowledged his behavior also harmed his family members.

8 5. The extent to which the judge exploited the judge's official capacity to satisfy
9 personal desires

10 Respondent's inappropriate personal relationship with a subordinate court employee
11 satisfied personal desires and was destructive to the operation of the court and to its
12 reputation.

13 6. The effect the misconduct has upon the integrity of and respect for the
14 judiciary

15 Respondent's prior censure by the Commission brought public disrepute to the
16 bench, and the misconduct currently at issue is a repetition of the behavior which he
17 acknowledged he was specifically ordered not to repeat. His conduct has negatively
18 impacted the significant work for the benefit of the court and the community that he has
19 achieved.

19 **B. Mitigating Factors:**

20 7. Whether the judge has acknowledged or recognized that the acts occurred

21 Respondent has acknowledged that the acts occurred.

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

23 Respondent has elected, prior to resolution of this case, to tender his resignation
24 from the bench.

25 9. The judge's length of service in a judicial capacity

26 Respondent has been a judge for 17 years. He has a record of accomplishments
27 on the bench, as noted by him in his letter of resignation to the court (see Exhibit B,
28

1 incorporated herein by reference.)

2 11. Whether the judge cooperated with the commission investigation and
3 proceeding

4 Respondent has cooperated with the investigation and proceeding.

5 **AGREEMENT**

6 1. Based upon the foregoing stipulated facts, Respondent agrees that while
7 serving in his capacity as Judge of the Clark County District Court, he
8 violated Canons 1, 2(A), 2(B), 3(A)(3), 3(B)(1), and 3(B)(3) of the Code of
9 Judicial Conduct and the terms of the Commission's prior order in CJC No.
10 95-2136-F-61.

11 2. Respondent hereby agrees to accept a censure and to the imposition of
12 corrective terms and conditions. A censure is a written action of the
13 Commission that finds that the conduct of the respondent violates a rule of
14 judicial conduct, detrimentally affects the integrity of the judiciary, and
15 undermines public confidence in the administration of justice.

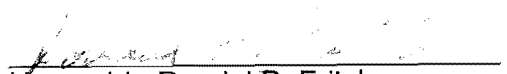
16 3. This stipulation is accepted in part in recognition of Respondent 's following
17 corrective actions:

18 (a) Respondent has tendered his resignation from his judicial office
19 effective January 5, 2004. Respondent's resignation is attached
20 hereto as Exhibit B.

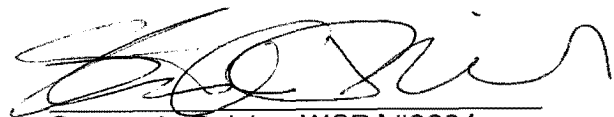
21 (b) Respondent further agrees that he shall take no retaliatory action
22 toward anyone associated with this case or the underlying
23 investigation.

24 4. Respondent agrees that after the effective date of his resignation, he shall
25 not seek nor hold any judicial office, nor perform any judicial duties in the
26 future without first securing approval from the Commission in the manner
27 provided in CJCRP 28, or its successor or replacement rule. Respondent
28 agrees that should Respondent seek any position involving judicial or quasi-

1 judicial functions, the Commission may release information to a
2 governmental or judicial qualifications organization pursuant to CJCRP 11,
3 or the successor or replacement rule.

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5 
Honorable Randal B. Fritzler

Dated: _____

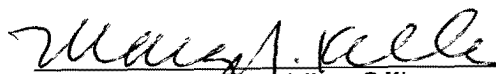
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8 Steven A. Reisler, WSBA#9384
9 Disciplinary Counsel

Dated: 1-27-04

1 **ORDER OF CENSURE**

2 Based upon the above Stipulation and Agreement, the Commission on Judicial
3 Conduct hereby orders and Judge Randal B. Fritzler is hereby CENSURED for violating
4 Canons 1, 2(A), 2(B), 3(A)(3), 3(B)(1), and 3(B)(3) of the Code of Judicial Conduct and the
5 terms of the Commission's prior order in CJC No. 95-2136-F-61. Respondent shall fulfill
6 the terms of the agreement as above set forth.

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9 DATED this 6 day of February, 2004.

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12 Margo Keller, Presiding Officer
13 Commission on Judicial Conduct
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STIPULATED ORDER OF CENSURE
CJC NO. 95-2136-F-61

"EXHIBIT A"

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED

AUG 9 1996

In Re the Matter of)
)
Honorable Randal B. Fritzler)
Clark County District Court)
1200 Franklin Street)
Vancouver WA 98666)
_____)

No. 95-2136-F-61

COMMISSION ON JUDICIAL CONDUCT

STIPULATION AND ORDER
OF CENSURE

The Commission on Judicial Conduct and the Honorable Randal B. Fritzler, Judge of the Clark County District Court, do hereby stipulate and agree as provided for herein. This stipulation shall not become effective until approved by the Washington Commission on Judicial Conduct.

The Commission on Judicial Conduct is represented in these proceedings by its counsel, David Akana, and the Honorable Randal B. Fritzler is represented by his attorney, John A. Strait.

STIPULATED FACTS

1. The Honorable Randal B. Fritzler, Respondent herein, is now, and was at all times discussed herein, a Judge of the Clark County District Court, Vancouver, Washington.

2. For one or two months in 1995, Respondent engaged in a consensual sexual relationship with a court employee.

3. The court employee held the position of judicial secretary. The duties of this position required regular contact with Respondent and the other district court judges. The judicial secretary was directly supervised by the court administrator.

4. The court employee's spouse is an attorney, a sole practitioner who appears often in district court, and whose offices are located in Clark County.

5. Respondent and the court employee conducted their relationship over a few months. Aspects of the relationship occurred after scheduled court business, but with some association with court facilities and scheduling.

6. The relationship became known within the district court.

7. Respondent performed a number of judicial acts in cases where the court employee's spouse was attorney of record. These judicial acts included presiding over primarily uncontested hearings and entering default judgments in collection matters.¹ Respondent did not disclose his relationship with the court employee to any party in these proceedings.

8. The relationship between Respondent and the court employee disrupted the administration of the court. Although the court employee bears some responsibility in this matter, the relationship impacted the workplace through distractions including social contacts, rumors, and work performance problems.

9. Respondent did not disclose his relationship with the employee in meetings with the court administrator concerning rumors and the work performance of the court employee.

¹ E.g., Court Case Nos. 7554102, 222011, 940525, 7810078.

10. The relationship interfered with the court's business. It eventually required rescheduling the attorney's matters out of Respondent's department. For a short time, the entire district court bench recused itself from this attorney's cases. His matters were rescheduled before a judge pro tem solely assigned for him. These consequences may have affected the attorney's reputation and practice.

11. Respondent cooperated with the Commission by promptly submitting preliminary information and filing a thorough response to a Statement of Allegations. Respondent has voluntarily undergone counseling.

12. Respondent has been a judge since his election in 1986. Respondent has no history of disciplinary action by this Commission for any violation of the Code of Judicial Conduct.

AGREEMENT

1. Based upon the foregoing stipulated facts, Respondent agrees that while serving in his capacity as Judge of the Clark County District Court, he did violate Canons 1, 2(A), 3(B)(1) and 3(D)(1)(a) of the Code of Judicial Conduct.²

²

CANON 1

Judges shall uphold the integrity and independence of the judiciary.

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

2. Respondent agrees that he shall not repeat such violations in the future, mindful of the threat his conduct poses to public confidence in the integrity and impartiality of the judiciary, and to the administration of justice.

Comment

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

Judges should avoid impropriety and the appearance of impropriety in all their activities.

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

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CANON 3

Judges shall perform the duties of their office impartially and diligently.

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:

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(B) Administrative Responsibilities.

(1) Judges should diligently discharge their administrative responsibilities, maintain professional competence in judicial administration and facilitate the performance of the administrative responsibilities of other judges and court officials.

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(D) Disqualification.

(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

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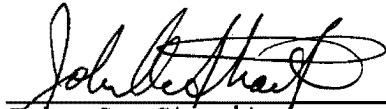
3. Although this sexual relationship was consensual, Respondent agrees that, in addition to concerns of propriety and concerns about this court employee's attorney spouse, intimate relationships between individuals of such unequal power and such proximity are, at best, ill-advised, and by their nature may impair the functioning of any work environment.


4. Respondent agrees that, although the judicial acts referred to above required little discretion, his conduct raised reasonable questions about his impartiality.

5. Respondent agrees that he will attend and participate in the course "Ethics for Judges," scheduled for November 20-22, 1996, at the National Judicial College, Reno, Nevada. Respondent agrees that he shall personally pay for all expenses connected with the course. In the alternative, Respondent may substitute a suitable educational offering pertinent to the violations set forth above, subject to the advance approval of the Commission. Respondent shall certify his attendance at either educational offering to the Commission.

DATED this 11th day of June, 1996


Honorable Randal B. Fritzler


John A. Strait
Counsel for Respondent


David Akana
Counsel for Commission on
Judicial Conduct

ORDER OF CENSURE

Based upon the above Stipulation and Agreement, the Commission on Judicial Conduct hereby orders, and Respondent is hereby censured, for the above set forth violations of the Code of Judicial Conduct.

DATED this 9th day of August, 1996.

Margo J. Keller
Margo Keller, Chair
Commission on Judicial Conduct

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LETTER OF RESIGNATION

"EXHIBIT B"

**DISTRICT COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY**

VERNON L. SCHREIBER
SCOTT S. ANDERS
DARVIN J. ZIMMERMAN
KENNETH R. EIESLAND
RANDAL B. FRITZLER
JUDGES OF THE DISTRICT COURT

JAMES P. SWANGER
DISTRICT COURT COMMISSIONER



ROBERT A. WINSOR
District Court Operations Manager

RAFAELA SELGA
District Court Administration Manager

December 18, 2003

Vernon Schreiber
Presiding Judge of the Clark County District Court
PO Box 9806
Vancouver, WA 98666

Dear Judge Schreiber,

For the past seventeen years I have dedicated my life to improving the court system. As part of this effort I sponsored and promoted several consultants in attempts to revamp the Clark County District Court organization. Some of these efforts have failed but quality low cost court services have survived. While the population of our county has doubled since 1987 a combined effort of all the District Court judges has resulted in improved performance without the addition of any new judicial officers.

I have been able to initiate new models for the judiciary. In the process, previously neglected victims of domestic violence and individuals with serious mental illness have been provided greater access to justice. The focus of the court has changed from legal procedure to positive outcomes. A good example is the mental health court. Washington State University professors found that the court reduced jail usage and saved the county money while improving public safety. A recent study completed this fall by Portland State University concluded that 1) Seventy-one per cent of participants had no criminal justice contact after enrolling in mental health court. 2) The overall crime rate of participants was reduced nearly 4 times. 3) There was a 56% reduction in probation violations after enrolling and completing mental health court. 4) The mental health court breaks the cycle of the repeat offender. These successes are very satisfying but the court still needs long term planning and processes that anticipate the growth of our county and the community's future needs.

I have had the opportunity to serve as presiding judge six of my seventeen years on the bench. I have also had the privilege of serving on important State and National committees to improve the judiciary. Under my leadership our court has adopted a vision statement, supported, in principle, the National Center for State Courts "court performance standards" and embraced evidence based practices. I have continually advocated for the court adopting good business practices developed by private industry and suggested reorganization based on a workload study as well as an active risk management process. Through my work on the Washington State Best Practices Committee, good collection processes have been identified and recently adopted by the court. I have also played a role in imposing "performance audits" on the courts. In these

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e-mail: distct@co.clark.wa.us

89 C STREET
WASHOUGAL, WA 98671
(360) 833-1919
FAX: (360) 833-0818

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December 17, 2003

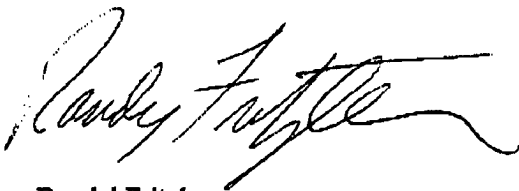
ways and others I have promoted the orderly administration of the court and made the court much more effective in accomplishing its goals and objectives.

All of the above have been significant achievements but the record has been marred by my personal failures. In aggressively promoting court reform and change I have become contentious with my opponents and have failed to address personal behavioral issues in the process. While many of the assertions or accusations made against me have been untrue, my personal behavior at times and particularly the way I have handled relationships has been inappropriate and hurtful. For these failures I apologize to everyone, especially my wife, my children, my mother, extended family and the citizens who elected me. I will be apologizing additionally and specifically to the individuals I have worked with who understood and supported my efforts. There is no excuse for my failures. Yet, in spite of these failures, I know I have been an effective agent of change and can make a significant positive contribution to this community in the future. I intend to do so. However, my contribution should now come in ways other than in the role of District Court judge. Apologies are not enough; I must now address these personal issues and allow others to build upon the constructive changes that have begun in our Court. I will always be grateful to those that have understood and supported my efforts.

Departing under these difficult circumstances is a challenge but it is also an opportunity. I will accept the challenge and seize the opportunity. In doing so, I will continue my dedication to innovation and maintain a role through my writing and advocacy to reform legal processes so that ordinary citizens may have improved access to legal remedies.

I hereby resign my position as Judge of Department 5 of the Clark County District Court effective January 5, 2004.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Randal Fritzler', written in dark ink.

Randal Fritzler

CANONS 1, 2(A), 2(B), 3(A)(3), 3(B)(1), and 3(B)(3)
of the Code of Judicial Conduct

"EXHIBIT C"

CANON 1

Judges shall uphold the integrity and independence of the judiciary.

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

Comment

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

Judges should avoid impropriety and the appearance of impropriety in all their activities.

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

(B) Judges should not allow family, social, or other relationships to influence their judicial conduct or judgment. Judges should not lend the prestige of judicial office to advance the private interests of the judge or others; nor should judges convey or permit others to convey the impression that they are in a special position to influence them. Judges should not testify voluntarily as character witnesses.

Comment

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities.

The testimony of judges as character witnesses injects the prestige of their office into the proceeding in which they testify and may be misunderstood to be an official testimonial. This canon however, does not afford judges a privilege against testifying in response to a subpoena.

CANON 3

Judges shall perform the duties of their office impartially and diligently.

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.

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