

FILED
JUN 18 2004
COMMISSION ON JUDICIAL CONDUCT

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

In Re the Matter of
HON. PATRICK R. BURNS
Judge, Auburn Municipal Court

**STIPULATION, AGREEMENT
AND ORDER OF REPRIMAND**

CJC No. 4118-F-111

The Commission on Judicial Conduct and the Honorable Patrick R. Burns, Judge of the Auburn Municipal Court, stipulate and agree as provided herein. This stipulation is submitted pursuant to the Washington Constitution, Article IV, Section 31 and Rule 23 of the Commission's Rules of Procedure and shall not become effective until approved by the Washington Commission on Judicial Conduct.

The Commission has been represented in these proceedings by Disciplinary Counsel Steven A. Reisler. Judge Burns has been represented by Attorney Leland G. Ripley.

I. STIPULATED FACTS

A. Background

1. Municipal Court Judge Patrick R. Burns (Respondent) is now, and was at all times referred to in this document, a judge of the Auburn Municipal Court. Respondent has served as the sole judge of the Auburn Municipal Court since being elected to that position in 1997.

2. In May 2003, the Commission on Judicial Conduct (Commission) received a complaint alleging Respondent wrote "NTG" on the bottom of some defendants' judgment and sentence forms. The complaint alleged these letters stood for "Nail This Guy," making it appear as though Respondent was predisposed to treat

1 those defendants more harshly in the future. Following a preliminary investigation,
2 the Commission contacted Respondent in August 2003 to advise him of the above-
3 referenced allegation and to obtain his response to the same. By letters dated
4 September 10, 2003, and October 6, 2003, Respondent replied to the Commission's
5 preliminary inquiries. On December 11, 2003, the Commission informed Respondent
6 it was commencing initial proceedings, at which time the Commission served a
7 Statement of Allegations on Respondent and invited his response. Respondent
8 answered the Statement of Allegations on January 9, 2004. The Commission served
9 an Amended Statement of Allegations on Respondent on March 10, 2004, which
10 Respondent answered April 1, 2004.

11 **B. Conduct Giving Rise to Charges of Misconduct**

12 1. In hundreds of cases over the span of several years, Respondent wrote
13 the letters "NTG" on the bottom of some defendants' judgment and sentence forms.
14 Respondent placed these initials on the judgments at the time he imposed sentence.
15 Respondent never told individual defendants or their counsel what the letters "NTG"
16 on the judgment and sentence forms meant.

17 2. Respondent maintains he intended the initials "NTG" to mean "Note This
18 Guy (or Gal)." Respondent states he used these initials as a private method to
19 remind him of which cases he believed deserved closer scrutiny in the future should
20 he be required to review that person's sentence following a reported violation of
21 sentencing conditions. Respondent points out that the Auburn Municipal Court is a
22 very high volume court, necessitating his need for a system to remind him of which
23 cases deserve special attention in the future.

24 3. Respondent acknowledges, however, that he may well have told or
25 given others the impression that "NTG" meant "Nail This Guy." Respondent further
26 recognizes that at some point during the last two years it was widely rumored among
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1 Auburn Municipal Court employees and attorneys who practiced in that court that
2 "NTG" meant "Nail This Guy." Respondent further acknowledges that he contributed
3 to that rumor by writing the letters "NTG" on judgment and sentence forms, and by
4 making statements to others about the notation "NTG" that would cause them to
5 believe the letters stood for "Nail This Guy."

6 4. Although the objective evidence does not establish actual bias or
7 prejudice or that Respondent actually prejudged a particular case, Respondent
8 acknowledges that based on the "NTG" initials he wrote and the rumors he helped to
9 create, some parties, counsel and staff could have understood that Respondent
10 prejudged cases and intended to treat some defendants harshly, cruelly or
11 inappropriately in the future.

12 5. Respondent also acknowledges that the above acts, facts and rumors
13 undermine public confidence in the integrity and impartiality of the judiciary.

14 II. AGREEMENT

15 A. Respondent's Conduct Violated the Code of Judicial Conduct

16 Respondent's conduct, described above, violates Canons 1, 2(A),
17 3(A)(3) and 3(A)(5) of the Code of Judicial Conduct.¹

18 1. The Code of Judicial Conduct deals not only with subjective intent, but
19 also with appearances. Whatever Respondent may have intended "NTG" to mean,
20 his words and conduct led others to believe "NTG" meant "Nail This Guy." By writing
21 "NTG" on some defendants' judgment and sentence forms, generally understood to
22 be an acronym for "Nail This Guy," Respondent created the appearance he was
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25 1/ Canon 1 of the Code of Judicial Conduct provides, "Judges shall uphold the integrity and
26 independence of the judiciary." Canon 2 provides, "Judges should avoid impropriety and the appearance of
27 impropriety in all their activities," and Canon 2(A) specifies, "Judges should respect and comply with the law
28 and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the
judiciary." Canon 3 provides, "Judges shall perform the duties of their office impartially and diligently;" Canon
3(A)(3) specifies in part, "Judges should be patient, dignified and courteous to litigants;" and Canon 3(A)(5)
specifies, "Judges shall perform judicial duties without bias or prejudice."

1 biased or prejudiced against those individuals he intended to “nail.” Public confidence
2 in the integrity and impartiality of the judiciary is undermined when a judge’s conduct
3 creates the perception that a case has been prejudged or that there is a bias against
4 a party, regardless of whether the perceived bias or prejudice exists. Persons who
5 believed Respondent wrote “Nail This Guy” in code on some defendants’ judgments
6 could reasonably conclude that those defendants received, or would receive,
7 disparate or unfair treatment from the court.

8 2. Writing “NTG” on court documents, understood to mean “Nail This Guy,”
9 is undignified and disrespectful.

10 **B. Imposition of Sanction**

11 The sanction imposed by the Commission must be commensurate to the level
12 of Respondent’s culpability. The sanction must also be sufficient to restore and
13 maintain the dignity and honor of the judicial position and to protect the public by
14 assuring that the judge will refrain from acts of misconduct in the future. In
15 determining the appropriate level of discipline to be ordered, the Commission takes
16 into account the aggravating and mitigating factors enumerated in Rule 6(c) of its
17 Rules of Procedure.

18 1. Characteristics of Misconduct.

19 (a) *Factors in mitigation.* Respondent did not flagrantly or intentionally
20 violate his oath of office. Nor did he exploit his official capacity for personal gain.
21 Respondent states the sole motivation for his conduct was to develop a system to
22 identify cases that warranted a more thorough review prior to future hearings. These
23 factors do not excuse Respondent’s conduct, however. While the Commission is
24 mindful that courts must be efficient in their operations, they may not in the process
25 compromise a defendant’s rights or create the appearance of doing so.

1 As indicated above, the harm caused by Respondent's conduct was in
2 creating the impression that some defendants were deprived of having the chance to
3 be judged free from prejudice or bias. The objective evidence, however, does not
4 establish Respondent was actually biased or prejudiced against any defendant, or
5 that he actually prejudged any particular case. The sentences Respondent imposed
6 on those cases he distinguished with the initials "NTG" appear to be lawful and
7 justifiable.

8 (b) *Factors in aggravation.* Respondent engaged in the conduct
9 described above hundreds of times over the course of several years. Respondent's
10 misconduct occurred in his official capacity while he was on the bench, and related
11 to a core function of his responsibilities as a municipal court judge – sentencing
12 individuals convicted of misdemeanor criminal offenses. Respondent has a duty to
13 maintain the appearance of impartiality. The belief that he breached that duty
14 resulted in a corresponding loss of respect for the court's integrity.

15 2. Service and Demeanor of the Judge.

16 (a) *Factors in mitigation.* Respondent has been a municipal court judge
17 since 1997 and has had no prior disciplinary sanctions imposed against him.
18 Respondent no longer marks "NTG" on judgment and sentence forms.

19 (b) *Factors in aggravation.* Respondent was not forthright with the
20 Commission when asked to explain his conduct. Respondent's written replies to the
21 Commission's inquiries were vague and incomplete. During the course of the
22 Commission's investigation, Respondent sought to ascribe the rumors about his use
23 of the initials "NTG" and their meaning to the animus or misunderstanding of others,
24 rather than accept responsibility for his own words and actions. It was not until his
25 third written response to the Commission that Respondent confirmed that he himself
26 may have been the source of the courthouse rumors. Respondent also withheld the
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1 identity of a specific court employee with whom he had discussed his use and the
2 meaning of the "NTG" notation, despite the fact that the Commission had asked him
3 directly and in writing to identify *all* persons with whom he had had such discussions.
4 Respondent's failure to promptly disclose such relevant information undermines the
5 Commission's proper functioning, interferes with the integrity of the investigative
6 process and demonstrates either Respondent's lack of concern for the investigative
7 process or an intention to withhold evidence from the Commission. Respondent's
8 evasive responses to the Commission's investigation aggravate his violation of the
9 Code of Judicial Conduct and warrant an enhanced level of sanction.

10 3. Based upon the stipulated facts, upon consideration and balancing of
11 the aggravating and mitigating factors and Respondent's desire to resolve this matter,
12 Respondent and the Commission agree that Respondent's stipulated misconduct
13 shall be sanctioned by the imposition of a reprimand. A "reprimand" is a written action
14 of the Commission that requires a respondent to appear personally before the
15 Commission and that finds that the conduct of the respondent is a violation of the
16 Code of Judicial Conduct and does not require censure or a recommendation to the
17 supreme court that the respondent be suspended or removed. A reprimand shall
18 include a requirement that the respondent follow a specified corrective course of
19 action. Reprimand is an intermediate level of disciplinary action the Commission can
20 issue.

21 4. Respondent agrees that he will participate in ethics training, approved
22 in advance by the Commission Chair or his/her designate. He agrees to attend and
23 complete a course at the National Judicial College, accredited law school or judicial
24 seminar, or a similar institution or program no later than one year from the date this
25 stipulation is accepted by the Commission. Respondent agrees he will complete such
26 training at his own expense and will certify the completion of such training in writing
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1 within one year from the date this stipulation is accepted by the Commission.

2 5. Respondent agrees that he will not repeat such conduct in the future,
3 mindful of the potential threat any repetition of his conduct poses to public confidence
4 in the integrity and impartiality of the judiciary and to the administration of justice.

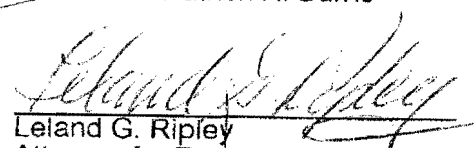
5 6. Respondent agrees that he will promptly read and familiarize himself
6 with the Code of Judicial Conduct in its entirety.

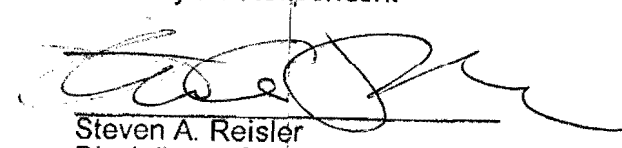
7 7. Respondent agrees that by entering into this stipulation and agreement,
8 he waives his procedural rights and appeal rights in this proceeding pursuant to the
9 Commission on Judicial Conduct Rules of Procedure and Article IV, Section 31 of the
10 Washington State Constitution.

11 8. Respondent further agrees that he will not retaliate against any person
12 known or suspected to have cooperated with the Commission, or otherwise
13 associated with this matter.

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15 DATED this 8th day of June 2004.

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18 
19 Honorable Patrick R. Burns


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22 Leland G. Ripley
23 Attorney for Respondent

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26 Steven A. Reisler
27 Disciplinary Counsel for the
28 Commission on Judicial Conduct

ORDER OF REPRIMAND

Based on the above Stipulation and Agreement, the Commission on Judicial Conduct hereby orders Respondent, Patrick R. Burns, reprimanded for the above set forth violations of the Code of Judicial Conduct. Respondent shall not engage in such conduct in the future and 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