

FILED

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COMMISSION ON JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In Re the Matter of:

The Honorable Jeffrey K. Day,
Judge, Orting Municipal Court and
Judge Pro Tem, Pierce County
District Court

4413-F-115

**STIPULATION, AGREEMENT AND
ORDER OF CENSURE**

The Commission on Judicial Conduct and Jeffrey K. Day, former Orting Municipal Court Judge and Judge Pro Tem of the Pierce County District Court (Respondent), do hereby stipulate and agree as provided 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.

Respondent is represented by Attorney Brett Purzter in this proceeding.

STIPULATED FACTS

1. Respondent was at all relevant times discussed herein, a part-time judge of the Orting Municipal Court, in Pierce County, Washington, and served as a pro tem judge in the Pierce County District Court.
2. On October 7, 2004, a Pierce County jury convicted Respondent of Child Molestation in the First Degree (a Class A felony offense), for conduct that took place on February 15, 2004.
3. The victim of Respondent's crime was an 11 year-old former client of his and with whom the Respondent was said to be in a mentoring relationship following their legal association.

AGGRAVATING AND MITIGATING FACTORS

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

A. Aggravating Factors:

1. Whether the misconduct is an isolated incident or evidence of a pattern of misconduct; and whether there has been prior discipline against the judge

Respondent has no prior history of judicial misconduct.

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

The misconduct is a single incident of an extremely serious nature.

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

The misconduct occurred out of the courtroom, in the judge's private life. The Code of Judicial Conduct is applied to a judge's personal conduct when that conduct impacts the ability of the judge or others to properly discharge their official duties or where the judge's personal conduct otherwise adversely reflects on the judge's integrity or fitness for office.

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

Child molestation is profoundly injurious to the victim and society as a whole.

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

Although Respondent was in a position of trust and responsibility toward the victim, there is no indication that his status as judge impacted their relationship or the incident in question.

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

Conviction of a serious felony of this nature brings public disrepute to the bench.

¹CJCRP 6(c)

1 **B. Mitigating Factors:**

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

3 Respondent has acknowledged that the conviction occurred, though he maintains
4 he is factually innocent.

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

6 Respondent denies actual guilt of the offense, though he acknowledges the
7 conviction.

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

9 Respondent has been a pro tem judge in Pierce County District Court for eight years
10 and the Municipal Court Judge in Orting for three years.

11 11. Whether the judge cooperated with the commission investigation and
12 proceeding

13 Respondent has cooperated with the investigation and proceeding.

14 **AGREEMENT**

15 1. Based upon the foregoing stipulated facts, Respondent agrees that he
16 violated Canons 1 and 2(A) of the Code of Judicial Conduct².

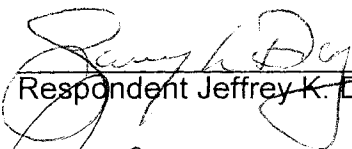
17 2. Respondent hereby agrees to accept a censure and to the imposition of
18 corrective terms and conditions. A censure is a written action of the
19 Commission that finds that the conduct of the respondent violates a rule of
20 judicial conduct, detrimentally affects the integrity of the judiciary, and
21 undermines public confidence in the administration of justice. It is the
22 highest level of discipline the Commission can impose.

23 3. This stipulation is accepted partly in recognition of the fact that Respondent
24 voluntarily ceased to serve as judge for the City of Orting upon being
25 charged with the offense, and his formal resignation as judge there was
26 tendered and accepted on October 14, 2004. Since the time he was

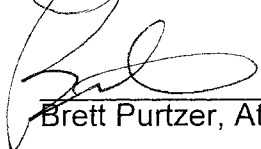
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28 ²See attachment

1 charged, he has been removed from consideration for service as a pro tem
2 judge by the Pierce County court system.

- 3 4. Respondent agrees that he shall not seek nor hold any judicial office, nor
4 perform any judicial duties in the future without first securing approval from
5 the Commission in the manner provided in CJCRP 28, or its successor or
6 replacement rule. Respondent agrees that should Respondent seek any
7 position involving judicial or quasi-judicial functions, the Commission may
8 release information to a governmental or judicial qualifications organization
9 pursuant to CJCRP 11, or the successor or replacement rule.

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13 Respondent Jeffrey K. Day

Dated: 1/27/05

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16 Brett Purtzer, Attorney for Respondent

Dated: 1/31/05


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18 Barrie Althoff
19 Executive Director

Dated: February 2, 2005

1 **ORDER OF CENSURE**

2 Based upon the above Stipulation and Agreement, the Commission on Judicial
3 Conduct hereby orders and Judge Jeffrey K. Day is hereby CENSURED for violating
4 Canons 1 and 2(A) the Code of Judicial Conduct. Respondent shall fulfill the terms of the
5 agreement as above set forth.

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8 DATED this 2/4/05 day of February, 2005.

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12 Marianne Connelly, Chairperson
13 Commission on Judicial Conduct
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Attachment

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

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.