

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

FILED
DEC - 1 - 2006
COMMISSION ON JUDICIAL CONDUCT

3 In the Matter of:)
4)
5 The Honorable James J. Helbling,)
6 Judge of the Bonney Lake Municipal Court)
)

CJC No. 4453-F-128

**STIPULATION, AGREEMENT
AND ORDER OF REPRIMAND**

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8 The Washington State Commission on Judicial Conduct (“Commission”) and the
9 Honorable James J. Helbling, Judge of the Bonney Lake Municipal Court (“Respondent”),
10 stipulate and agree as provided herein. This stipulation is submitted pursuant to Article IV,
11 Section 31 of the Washington Constitution and Rule 23 of the Commission’s Rules of
12 Procedure.

13 **I. STIPULATED FACTS**

14 1. Respondent is now, and was at all times referred to in this document, a part-time
15 judge of the Bonney Lake Municipal Court in Pierce County, Washington. Respondent has
16 served as the sole judge for that court since 1986. The Bonney Lake Municipal Court regularly
17 holds a criminal calendar one day a week, during which it conducts arraignments, pretrial
18 hearings, and post-conviction review hearings, among other things.

19 2. The Commission first contacted Respondent on this matter in February 2006.
20 Until being contacted by the Commission, Respondent’s standard arraignment procedure, as
21 relevant to this disciplinary proceeding, was as follows. Prior to commencing the court’s
22 arraignment calendar, court personnel would provide each defendant appearing for arraignment
23 written forms entitled “Advice of Rights” and “Elements of Crimes.” The “Advice of Rights”
24 form identified and explained the nature of a criminal defendant’s fundamental rights, such as
25 the right to remain silent, to be represented by a lawyer, to have a speedy and public trial before
26 either a judge or jury, and to plead guilty or not guilty. The “Elements of Crimes” form
27 identified the specific elements, classification and potential penalties of the various municipal
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1 offenses with which a defendant could be charged in the Bonney Lake Municipal Court. Each
2 defendant was required to sign the "Advice of Rights" form and to initial next to the applicable
3 offense(s) with which the defendant was charged in the "Elements of Crimes" form. When
4 Respondent called an individual defendant's case, that defendant provided the forms to
5 Respondent, who verified the forms were signed and initialed. Respondent would then,
6 without further inquiry, ask the defendant to enter a plea of "guilty" or "not guilty."

7 3. Until being contacted by the Commission, as a matter of practice, Respondent
8 did not ask unrepresented defendants appearing before him at arraignment whether they had
9 read and understood the written "Advisement of Rights" and "Elements of Crimes" forms
10 provided by the court. Respondent made no inquiry or verbal advisement of rights at all prior
11 to asking each defendant to enter a plea. Thus, Respondent's practice allowed him to presume,
12 rather to actually ascertain, that each defendant actually read and understood the rights he or
13 she had before entering a plea.

14 4. Until being contacted by the Commission, as a matter of practice, Respondent
15 failed to advise unrepresented defendants on probation of their rights in subsequent probation
16 review hearings, including their fundamental due process rights to be represented by counsel
17 during the probation review proceeding and to contest any allegation of noncompliance.

18 19 **II. AGREEMENT**

20 **A. Respondent's Conduct Violated Canons 1, 2(A) and 3(A)(1) of the Washington** 21 **State Code of Judicial Conduct.**

22 1. Canons 1 and 2(A) of the Code of Judicial Conduct require judges to uphold the
23 integrity of the judiciary by avoiding impropriety and the appearance of impropriety and by
24 acting at all times in a manner that promotes public confidence in the integrity and impartiality
25 of the judiciary. Canon 3(A)(1) of the Code requires judges to be faithful to the law and to
26 maintain professional competence in it.

27 2. Based upon the foregoing stipulated facts, Respondent agrees he violated
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1 Canons 1, 2(A) and 3(A)(1) of the Code by engaging in a routine pattern and practice of failing
2 to properly advise criminal defendants of their constitutional rights at arraignment and
3 probation review hearings, and by failing to ensure that guilty pleas were validly entered.

4 3. Judges have a basic responsibility to ensure that criminal defendants are
5 properly advised of their constitutional and due process rights so that they are able to make
6 informed decisions regarding their cases. Judges also have a basic duty to ensure that guilty
7 pleas are constitutionally valid. These core judicial functions are dictated by the constitutional
8 requirement that the decision to plead guilty or to otherwise waive a fundamental right (such
9 as the right to counsel or the right to trial by jury) must be made knowingly, intelligently and
10 voluntarily.

11 4. The judicial procedures designed to safeguard a criminal defendant's
12 fundamental rights, and the corresponding validity of a guilty plea, are comprehensively set
13 forth in the court rules, statutes and case law, and highlighted in this Commission's prior
14 decisions. In addition, the Criminal Benchbook for Courts of Limited Jurisdiction provides
15 practical guidance on how to observe these rights.

16 5. Although defendants appearing before Respondent for arraignment were
17 provided written information explaining their constitutional rights and the nature of the
18 charge(s) they faced, this method of advisement was, standing alone, deficient. Respondent
19 was obligated, at the very least, to inquire whether the unrepresented defendants before him had
20 read and understood the written court information and to engage in some level of colloquy to
21 determine the decision to plead guilty or waive an important right was done voluntarily,
22 competently and with an understanding of the consequences. See, In re Hammermaster, 139
23 Wn.2d 211, 236 (1999). Moreover, a judge must advise an unrepresented defendant on the
24 record of the right to be represented by a lawyer at arraignment and to have an appointed
25 lawyer for the arraignment if the defendant cannot afford one. CrRLJ 4.1(a)(3). Finally,
26 Respondent made no effort to advise or readvise unrepresented defendants of their rights at
27 subsequent probation review or revocation hearings. See, CrRLJ 7.6.

1 **B. Respondent and the Commission Agree to the Imposition of a Reprimand as a**
2 **Sanction for the Violations Described Herein.**

3 1. The sanction imposed by the Commission must be commensurate to the level
4 of Respondent's culpability, sufficient to restore and maintain the public's confidence in the
5 integrity of the judiciary, and sufficient to deter similar acts of misconduct in the future.

6 2. In determining the appropriate level of discipline to impose, the Commission
7 must consider the following non-exclusive factors set out in Rule 6(c) of its Rules of
8 Procedure.

9 **a. Characteristics of Misconduct.**

10 (1) **Whether the misconduct is an isolated instance or evidence of a**
11 **pattern of conduct.**

12 The violations described above were not isolated, but rather constituted a
13 regular and predictable practice that Respondent had followed for years.

14 (2) **The nature, extent and frequency of occurrence of the acts of**
15 **misconduct.**

16 The Commission and the Washington State Supreme Court have repeatedly
17 found that denying a defendant basic due process through defective arraignment or
18 change of plea practices is a serious violation of Canon 3(A)(1). In re Hammermaster,
19 139 Wn.2d 211; In re Michels, 150 Wn.2d 159 (2003); In re Ottinger, CJC No. 4475-F-
20 119 (Commission Decision May 5, 2006). As noted above, the acts of misconduct
21 were systemic and routine.

22 (3) **Whether the misconduct occurred in or out of the courtroom.**

23 In every case, the misconduct occurred in the courtroom.

24 (4) **Whether the misconduct occurred in the judge's official capacity**
25 **or in the judge's private life.**

26 All the conduct occurred in the judge's official capacity.

27 (5) **Whether the judge flagrantly and intentionally violated the oath of**
28 **office.**

There is no evidence Respondent flagrantly or intentionally violated the oath
of office. Respondent has maintained that his advisement practices were the result of

1 his not fully understanding the rules governing arraignment, change of plea and
2 probation review proceedings.

3 **(6) The nature and extent to which the acts of misconduct have been**
4 **injurious to other persons.**

5 Respondent's misconduct potentially deprived numerous accused persons of
6 due process and may have resulted in guilty pleas and probation violations that are
7 constitutionally infirm. While it is impossible to ascertain the extent of actual injury
8 to any particular person, the nature of the misconduct creates a danger of injury in each
9 instance. It is impossible to know which constitutional rights a defendant would have
10 asserted, assuming he/she had known those rights existed.

11 **(7) The extent to which the judge exploited the judge's official capacity**
12 **to satisfy personal desires.**

13 There is no evidence Respondent exploited his position for personal desires.

14 **(8) The effect the misconduct has upon the integrity of and respect for**
15 **the judiciary.**

16 The inadequate dialogue between the court and defendants created the
17 impression of a mechanical process that undercuts the public's respect for the judiciary.
18 Unrepresented defendants in courts of limited jurisdiction rely above all on the judges
19 in those courts to assure they are afforded their due process of law.

20 **b. Service and Demeanor of the Judge**

21 **(1) Whether the judge has acknowledged or recognized that the acts**
22 **occurred.**

23 As soon as the Commission brought this matter to Respondent's attention, he
24 openly acknowledged the acts occurred and recognized the impropriety of his
25 advisement practices.

26 **(2) Whether the judge has evidenced an effort to change or modify the**
27 **conduct.**

28 Respondent promptly corrected the deficiencies noted herein as soon as the
Commission brought this matter to his attention. He affirms that he promptly reviewed
the relevant case law and rules of court, and continues to consult the Criminal

1 Benchbook, to ensure that his arraignment, change of plea and probation review
2 procedures conform to the law. The Commission's continuing investigation confirms
3 Respondent has remedied the concerns giving rise to this disciplinary action.

4 (3) **The judge's length of service in a judicial capacity.**

5 Respondent has served his community as a part-time judge for over twenty
6 years.

7 (4) **Whether there has been prior disciplinary action concerning the
8 judge.**

9 There have been no prior disciplinary actions concerning Respondent.

10 (5) **Whether the judge cooperated with the Commission investigation
11 and proceeding.**

12 Respondent has fully cooperated with the Commission in this matter. His
13 response to this disciplinary proceeding has been exemplary, both in the manner in
14 which he has comported himself before the Commission and in his sincerity to correct
15 the problems identified by the Commission. His recognition of the concerns raised in
16 this matter and prompt remedial actions upon notice from the Commission contrast
17 favorably with the experiences in the prior Commission cases cited above involving
18 pattern due process violations.

19 3. Based upon the stipulated facts, upon consideration and balancing of the above
20 factors, Respondent and the Commission agree that Respondent's stipulated misconduct shall
21 be sanctioned by the imposition of a reprimand. A "reprimand" is a written action of the
22 Commission that requires a respondent to appear personally before the Commission and that
23 finds that the conduct of the respondent is a violation of the Code of Judicial Conduct, but does
24 not require censure or a recommendation to the supreme court that the respondent be suspended
25 or removed. A reprimand shall include a requirement that the respondent follow a specified
26 corrective course of action. Reprimand is the intermediate level of disciplinary action available
27 to the Commission.

28 4. Respondent agrees that he will not repeat such conduct in the future, mindful

1 of the potential threat any repetition of his conduct poses to public confidence in the integrity
2 and impartiality of the judiciary and to the administration of justice.

3 5. Respondent agrees he will promptly read and familiarize himself with the Code
4 of Judicial Conduct, the Criminal Rules for Courts of Limited Jurisdiction and the Criminal
5 Procedure Benchbook for Courts of Limited Jurisdiction in their entirety.

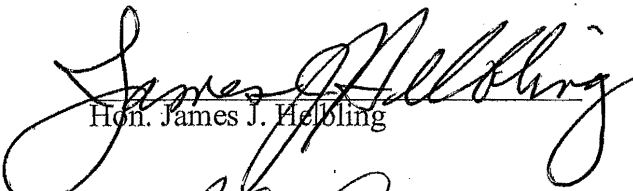
6 6. Respondent agrees he will complete a course on judicial ethics with an emphasis
7 on criminal procedure at his expense, approved in advance by the Commission's chairperson
8 or the chairperson's designee, and provide proof of completion of the course within one year
9 of the date this stipulation is entered.


10 Standard Additional Terms and Conditions

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

15 8. Respondent has represented himself during this proceeding. Respondent affirms
16 he has consulted with, or has had an opportunity to consult with, counsel prior to entering into
17 this stipulation.

18 9. Respondent further agrees that he will not retaliate against any person known
19 or suspected to have cooperated with the Commission, or otherwise associated with this matter.

21 
22 Hon. James J. Hebling Nov. 24, 2006
23 Date

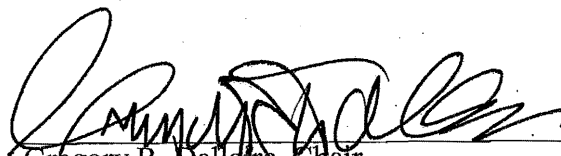
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25 J. Reiko Callner Nov. 27, 2006
26 Executive Director Date
27 Commission on Judicial Conduct

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ORDER OF REPRIMAND

Based on the above Stipulation and Agreement, and pursuant to the authority contained in Article IV, Section 31 of the Washington State Constitution, the Commission on Judicial Conduct hereby orders Respondent, Judge James J. Helbling, 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 6 day of DECEMBER 2006


Gregory R. Dallaire, Chair
Commission on Judicial Conduct