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COMMISSION ON JUDICIAL CONDUCT

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

In re the Matter of
HONORABLE MARY ANN OTTINGER
Judge King County District Court

CJC No. 4475-F-119
COMMISSION DECISION

A fact finding hearing relating to the above-entitled matter was held on February 13, 14 and 15, 2006, pursuant to an Order of the Commission on Judicial Conduct. Members of the Commission on Judicial Conduct present as a fact finding panel were Wanda Briggs, Antonio Cube, Gregory Dallaire, Wayne Ehlers, John McCarthy (presiding officer), Gerald Roach, John Schultheis, John Sleeter, Josephine Townsend, and Betsy Wilkerson.

Respondent was present with, and represented by, her counsel, David Allen. Disciplinary counsel for the CJC was Paul R. Taylor.

The CJC heard and considered the testimony of witnesses, the exhibits and records referenced herein and the briefs and arguments of counsel.

At the conclusion of the evidence, disciplinary counsel and counsel for Respondent stipulated to the dismissal of Section II(B)(i) of the Statement of Charges.

FINDINGS OF FACT

The CJC finds by clear, cogent and convincing evidence as follows:

1. The Honorable Mary Ann Ottinger ("Respondent") is now, and was at all times referred to in this document, a judge of the King County District Court, East Division, serving primarily in the Issaquah Courthouse. For the first ten years of her service, Respondent was the only judge in the Issaquah Courthouse, a position unique in King County District Court.

1 2. On June 18, 2004, Respondent entered a Stipulation with the CJC by which she
2 was censured for, inter alia, engaging in a pattern or practice of violating criminal
3 defendants' fundamental constitutional and due process rights. In that Stipulation,
4 Respondent agreed that she had

5 [R]outinely failed to advise unrepresented defendants of various
6 rights, including but not limited to: (i) the perils of proceeding
7 without counsel, (ii) the right to remain silent, and that anything
8 the accused says may be used against him or her. Respondent
9 also failed to orally make a determination of probable cause prior
10 to imposing conditions of pretrial release (CrRLJ 3.2.1(e)(2)).
11 While Respondent would subsequently advise a defendant that
12 pled guilty that such plea would not be accepted until a later
13 hearing to afford the opportunity to consult counsel, she
14 acknowledges that this practice is inconsistent with CrRLJ 4.2.

15 In the Stipulation, Respondent also

16 acknowledge[d] her need to change or modify the conduct in
17 question and represent[ed] that she [would] do so, consistent with
18 the requirements listed further below.

19 Finally, the Stipulation required Respondent to attend certain training:

20 Respondent agrees that she will participate in training, approved
21 in advance by the Commission, related to the proper
22 administration of her court, including proper procedures for rights
23 advisement relating to accepting pleas and imposing probationary
24 terms and conditions. Specifically, she will attend and complete
25 course work at the National Judicial College accredited law school
26 or judicial seminar, or similar institution/program in such matters
27 no later than one year from the date this stipulation is accepted
28 by the Commission. Respondent agrees she will complete such
training at her own expense and will certify the completion of such
training in writing within a year of the acceptance of this
Stipulation and Agreement by the Commission.

29 3. Pursuant to the Stipulation, Respondent arranged to attend a course at
30 the National Judicial College in Philadelphia, Pennsylvania. She provided the CJC
31 with a description of the course prior to attending it, and the CJC approved it.
32 Respondent attended the course, as required, and the CJC issued a Certification of
33 Compliance. The course did not adequately address arraignments or other
34 proceedings relating to advisement of rights or acceptance of pleas. Respondent did
35 not seek any additional training. Respondent knew that the class had not addressed
36 the subjects which she was required to study pursuant to the stipulation. Nevertheless,

1 she did not seek any additional training but instead certified to the CJC that she had
2 satisfied the requirements of the stipulation.

3 4. Following the Stipulation, Respondent failed to comply with CrRLJ
4 3.2.1(3)(2), which requires Respondent to make a finding of probable cause that a
5 crime had been committed . . . on the record prior to imposing bail or conditions of
6 pretrial release. While Respondent testified that she did review police reports to
7 ensure in her own mind that probable cause existed, she did not state the findings on
8 the record as required by the rule.

9 5. There is no evidence that Respondent imposed bail or other conditions
10 of pretrial release in cases where there was no probable cause. The expert for the
11 CJC reviewed cases where Respondent failed to announce her probable cause
12 determination on the record, and found that in every case he reviewed probable cause
13 did exist.

14 6. In multiple cases, Respondent advised criminal defendants of their right
15 to counsel after the criminal defendant entered a plea on the arraignment calendar.
16 The sequence of this advisement of rights violated constitutional and court rules
17 because it should have preceded the plea and should have been more extensive to
18 ensure that the criminal defendant was knowingly and voluntarily waiving his right to
19 counsel. Respondent's practice was to obtain a preliminary determination from a
20 defendant as to whether they were intending to plead guilty. Respondent subsequently
21 went through a more comprehensive plea colloquy when she accepted the written
22 guilty plea form. In every case presented at the hearing there was in the court file a
23 waiver of right to counsel. This is improper in that the intent to plead is being entered
24 before a waiver of attorney is obtained and, once a pro se defendant indicates an
25 intention to plead, the intention would generally not change. Although the oral intent
26 to plead by a defendant has limited legal weight until it is in writing, once the oral intent
27 is declared it sets in motion a process that is difficult to reverse, particularly for pro se
28 litigants. In addition, Respondent referred pro se defendants to prosecutors to fill out

1 a plea form. This may be proper but a defendant needs to understand completely that
2 they can stop the plea process at any time to exercise their legal rights once fully
3 understood.

4 The Respondent did not refer to criminal law benchbooks, which include sample
5 transcripts of colloquy between the judge and the defendant. Those sample colloquies
6 are neither court rules, statutes or case law. While the sample colloquies within the
7 benchbook are mere guidelines and are not binding on judges, and may be
8 impracticably long in most courts with high volume cases, they are instructive and
9 helpful. The judge's obligation is to ensure that a defendant knowingly, intelligently
10 and voluntarily understands their constitutional rights before they effectively waive
11 them or before they orally plead guilty. The process is simplified in most respects and
12 a judge does not have to go through everything with such comprehension when a
13 defendant has an attorney present who has provided said counsel. When a judge
14 refers a defendant to a prosecutor to prepare a plea form, the judge should make it
15 clear that the prosecutor represents an adverse party and does not represent the
16 defendant.

17 7. Examples of the cases referred to in the above paragraphs 4, 5 and 6 are
18 illustrated by the following cases:

19 Philip N. Cedarleaf, C7005 (hearing 8/17/04).
20 Patrick A. Tilley, C24072 & C24075 (hearings 8/17/04 and 8/23/04).
21 Ryan S. Uhrich, C24252 (hearing 8/23/04).
22 Shawn A. Henry, C75054 (hearing 8/23/04).
23 Jeremy A. Remlinger, C6591 (hearing 8/24/04).
24 Michael S. Ferren, CR13080NB (hearing 10/6/04).
25 Johnny Estacio, C2081 (hearing 8/25/04)
26 Joseph A. Rotarius, C2067 (hearing 10/20/04)
27 Joseph M. Garcia, Y40342683NB (hearing 11/15/04).

28 8. Respondent failed to advise defendants of the maximum available
penalties and other potential consequences of conviction prior to asking them for their
oral plea at arraignment.

9. After accepting an oral guilty plea, Respondent utilized a proper
Statement of Defendant on Plea of Guilty form, which was fully completed, for every

1 defendant who pled guilty in her court. This form advised the defendants of elements
2 of the crime to which they pled guilty, the maximum penalties, any mandatory minimum
3 penalties, and other consequences of convictions. Respondent reviewed these plea
4 forms with each defendant and determined their understanding of the proceeding.

5 10. Respondent has failed to adequately reiterate to individuals at probation
6 revocation hearings that they have the continued right to counsel and has failed to
7 adequately obtain a knowing, intelligent and voluntary waiver of such right. In the
8 probation hearing of *State v. Ryan Carter*, No. CQ30343NB, Respondent failed to
9 adequately inform defendant of his right to counsel, although Carter had been
10 previously advised. In another charged case, *State v. Adam G. Griffin*, No. C23675,
11 Respondent did adequately inform the defendant of his right to counsel, taking into
12 consideration that he had previously received his advice of rights and waived his right
13 to counsel at earlier proceedings and based upon the colloquy with the Respondent.
14 The CJC expert testified such a procedure is sufficient. A judge needs to be diligent
15 in continuing to remind pro se defendants of the right to counsel at new hearings,
16 particularly when jail time can be imposed.

17 11. Respondent did not intentionally violate the rights of any defendants.
18 She was negligent in not announcing her probable cause decisions on the record and
19 not properly advising defendants of maximum and minimum penalties and other
20 consequences of conviction prior to asking for an oral plea at arraignment. She was
21 negligent in not understanding that these practices were deficient.

22 12. There was no clear showing in any of the cases that the Commission on
23 Judicial Conduct brought before the hearing panel for review that any defendant
24 suffered prejudice as a result of Respondent's actions. Nonetheless, the negligence
25 of the judge cannot be excused.

26 13. Respondent admitted that she did not change various aspects of her
27 practices following the 2004 Stipulation, as required by the Stipulation. She continued
28 to impose conditions of release without making a finding of probable cause on the

1 record and continued to not advise defendants of various rights before asking them to
2 state a plea. The prior Stipulation had addressed other issues as well as those
3 addressed in this disciplinary action and the prior Stipulation focused on the lack of
4 written plea forms and other significant constitutional deprivation of rights. While her
5 practice after the Stipulation remedied some defects, it clearly did not address all
6 procedures that were specifically part of the disciplinary stipulation.

7 14. After the new Statement of Charges was filed in June of 2005,
8 Respondent changed her practice and began complying with the prior Stipulation as
9 well as constitutional requirements and court rules with regard to criminal defendants.
10 This included Respondent informing defendants on the record of her findings of
11 probable cause before setting bail or conditions of release; proper advisement of
12 constitutional rights and consequences of conviction prior to receiving a plea at
13 arraignment; proper advisement of right to counsel; and going through a sufficient
14 colloquy prior to accepting a waiver of right to counsel and obtaining a new waiver of
15 right to counsel in probation violation hearings. Respondent has continued to maintain
16 these standards.

17 15. Respondent admitted that she did not change various practices, as
18 required by the Stipulation, until 2005 because she negligently did not realize the need
19 for such changes until the current Statement of Charges was served.

20 16. Following June 2005, Respondent began requiring both prosecutors and
21 public defenders to attend all arraignments and bail hearings in her courtroom. While
22 Respondent ultimately waived the requirement for prosecutors to appear, she did
23 continue to require the presence of public defenders at this critical stage of the
24 proceeding. This is the procedure that is utilized in other misdemeanor courts,
25 including King County District Court, Seattle Division, Redmond Division, and Regional
26 Justice Center Division; and, Seattle Municipal Court, among others. This procedure
27 ensured that defendants would have attorneys present to advise them at their first
28 appearance and arraignments. This procedure was a very positive change, protected

1 defendants' rights, and may serve as a model for other courts.

2 17. In an effort to educate herself on the practices of other judges in handling
3 pro se defendants' cases, and in preparing to respond to this disciplinary proceeding,
4 Respondent, at her own expense, obtained recordings of other judges' procedures and
5 had them transcribed.

6 18. The evidence shows that in some other instances other King County
7 judges have followed similarly deficient procedures and continued to make similar
8 errors as Respondent, even after Respondent's first censure and subsequent
9 Statement of Charges, both of which were well publicized. The transcripts presented
10 assist in understanding the judicial standards and practices in these areas and put in
11 context the Respondent's practice. While some of these errors, including the order in
12 which a plea is taken, may appear to be technical errors, they impact fundamental
13 rights for people representing themselves and may have a significant impact on these
14 individuals.

15 19. Having now been apprised of these identified deficiencies, King County
16 District Court Presiding Judge has stated the court will review and discuss the judicial
17 practices. This is a positive step that only occurred because of Respondent's efforts
18 locating these recordings and having them transcribed.

19 CONCLUSIONS OF LAW

20 The CJC determines by clear, cogent and convincing evidence that Respondent
21 has violated Canons 1, 2(A) and 3(A)(1) of the Code of Judicial Conduct (CJC). These
22 sections of the Code state:

23 CANON 1

24 **Judges shall uphold the integrity and 25 independence of the judiciary.**

26 An independent and honorable judiciary is indispensable to justice in our
27 society. Judges should participate in establishing, maintaining and enforcing high
28 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.

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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.

CANON 3

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

(A) Adjudicative Responsibilities.

(1) Judges should be faithful to the law and maintain professional competence in it, and comply with the continuing judicial education requirements of GR 26. Judges should be unswayed by partisan interests, public clamor or fear of criticism.

Sanctions for Violations

Under both the Rules of the CJC and case law, there are ten non-exclusive factors the CJC must consider in determining the appropriate sanction for a violation of the Code of Judicial Conduct.

1. Whether the Conduct Was an Isolated Event or Act or a Pattern of Conduct.

The conduct described in the Findings of Fact was not an isolated incident and constituted a practice that Respondent has followed for years. This conduct continued after the earlier Stipulation and censure despite Respondent's agreement to cease such conduct. However, Respondent now appears to follow court rules and laws.

2. The Nature, Extent and Frequency of the Occurrence of the Acts of Misconduct.

The nature, extent and frequency of the due process violations have been significant and were ongoing until June of 2005. The deficient due process advisement practices were routine for Respondent. Because the practices implicate the constitutional rights of the defendants involved, the seriousness of the violations cannot be overstated. The nature of the misconduct is exacerbated by the fact that

1 Respondent stipulated that she needed to and would, change her practices, but did not
2 fully and completely comply with proper legal procedure until she was served with new
3 charges.

4 **3. Whether the Misconduct Occurred In or Out of the Courtroom.**

5 The misconduct regarding due process violations occurred in the courtroom.

6 **4. Whether the Misconduct Occurred in the Judge's Official Capacity
7 or Her Private Life.**

8 The conduct occurred in the judge's official capacity.

9 **5. Whether the Judge Has Acknowledged or Recognized That the Acts
10 Occurred.**

11 By the time of the hearing, Respondent acknowledged that the acts occurred,
12 that she had violated the Code of Judicial Conduct and she has changed her practices
13 significantly.

14 **6. Whether the Judge Has Evidenced an Effort to Change or Modify
15 Her Conduct.**

16 Respondent has changed her practices and now fully and repeatedly advises
17 defendants of their due process rights, and otherwise conducts her courtroom in
18 accordance with the requirements of the Constitution, Rules of Criminal Procedure,
19 and applicable case law. The CJC recognizes this is a mitigating factor.

20 **7. The Length of Service on the Bench.**

21 Respondent has served for approximately 14 years as a judge.

22 **8. Whether There Have Been Prior Complaints Against the Judge.**

23 Respondent was previously the subject of a Stipulation and Censure before the
24 CJC. As a part of the resolution of that complaint, Respondent agreed to cease
25 certain conduct. She did not in all respects. She also agreed to attend certain training.
26 She did attend training, but the training did not address the deficiencies identified in
27 the prior Stipulation. Respondent's continued failure to carefully and completely
28 comply with the law, court rules, and her ethical obligations, even after an earlier
sanction, is a strong aggravating factor.

1 attitude indicate that there is little chance that this conduct will recur, and the public will
2 be sufficiently protected with this sanction. Respondent's actions have also been
3 instrumental in improving the practices of other judges and in seeking adequate legal
4 representation at criminal proceedings. As part of the recommended discipline,
5 Respondent shall participate as a presenter in an educational program for other judges
6 detailing proper procedures at arraignments and acceptance of pleas. The
7 Respondent's participation shall include being part of the instructional program and
8 should be arranged and coordinated with Administrative Office of the Courts or judicial
9 associations. This educational program shall be conducted within one year.

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11 DATED this 5^m day of May, 2006.

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13 John A. McCarthy
14 John A. McCarthy

Gerald J. Roach
Gerald Roach

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16 Wanda Briggs
Wanda Briggs

John A. Schultheis

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18 See attached Dissenting Opinion
19 Antonio P. Cube, Sr.

John W. Sleeter
John Sleeter

20
21 Gregory R. Dallaire
Gregory R. Dallaire

Josephine C. Townsend
Josephine C. Townsend

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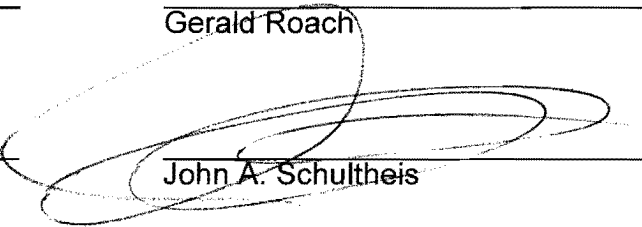
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DATED this _____ day of _____, 2006.

John A. McCarthy

Gerald Roach

Wanda Briggs



John A. Schultheis

See attached Dissenting Opinion
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**BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON**

In re the Matter of
HONORABLE MARY ANN OTTINGER
Judge King County District Court

CJC No. 4475-F-119
DISSENTING OPINION

I fully concur with the Commission's findings that the acts of Respondent Judge Mary Ann Ottinger violated the Code of Judicial Conduct. I cannot agree, however, to the degree of the sanction imposed. Respondent is a repeater of serious ethical violations. She has again shown continued disregard of the fundamental and constitutional due process rights of defendants.

The Code of Judicial Conduct commands and requires judges to (1) uphold the integrity and independence of the judiciary; (2) avoid impropriety and the appearance of impropriety in all their activities and respect and comply with the law; and (3) perform the duties of their office impartially and diligently.

In June of 2002, Respondent was charged with (1) having failed on multiple occasions to properly advise unrepresented defendants of their rights to court-appointed counsel; (2) for having failed to advise unrepresented defendants of the elements of the crime and penalties and other potential consequences of conviction; and (3) for having failed to advise unrepresented defendants of their due process rights in some other cases.

On June 18, 2004, Respondent entered into a stipulation to all the above charges, whereby she admitted to having committed all the above and thereby accepted an Order of Censure; a written action of the Commission finding that the conduct of the Respondent violated a rule or rules of judicial conduct, detrimentally affected the integrity of the judiciary, and undermined public confidence in the judicial

1 system.

2 With this acceptance of faults by the Respondent, Respondent further agreed
3 to participate in training related to the proper administration of her court, including but
4 not limited to the proper procedures for rights advisement related to accepting pleas,
5 particularly the right to counsel of indigent defendants and the imposition of
6 probationary terms and conditions.

7 It appears from the evidence presented that Respondent showed no sign of
8 improvement, which resulted in the filing of another Statement of Charges in June of
9 2005 for the same offenses.


10 While Respondent submitted testimonial as well as documentary evidence to
11 prove her compliance with the stipulation she signed in June of 2004, Respondent
12 likewise presented documentary evidence of other court transcripts showing other
13 judges making the same mistakes; for the purpose of justifying her pattern of ethics
14 violations.

15 It is very regrettable to say that the documentary evidence mentioned above
16 (showing other judges making the same mistakes) is more of an admission of
17 continuing to defy the stipulation she signed in June of 2004, rather than a faithful
18 compliance thereto. Finally, if the combination of censure and education did not work,
19 what else will work?

20 **CONCLUSION**

21 Considering all of the above, it is therefore and hereby submitted for
22 consideration that the sanction of REMOVAL FROM OFFICE should be the penalty
23 imposed on Judge Mary Ann Ottinger.

24 DATED this 5th day of May, 2006

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27 
28 Antonio P. Cube, Sr.