

FILED

JUN 30 2005

COMMISSION ON JUDICIAL CONDUCT

I certify under penalty of perjury under the laws of the State of Washington that on this date I mailed a copy of the document to which this certificate is affixed to Paul Taylor Esq. 1000 2nd Ave, #3800 Seattle 98104

Dated: 6/29/05
Sarah Conger

BEFORE THE
COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of:)	No.: 4475-F-119
)	
HONORABLE MARY ANN OTTINGER,)	ANSWER TO STATEMENT
Judge, King County District)	OF CHARGES
Court, Eastern Division.)	
)	

Honorable Mary Ann Ottinger, Respondent herein, by and through her attorneys, David Allen and Todd Maybrown, hereby answers the Statement of Charges filed in this matter. Any averments in the Statement of Charges not specifically admitted are denied.

ANSWER TO STATEMENT OF CHARGES

I. Background

1. Admit that the Honorable Mary Ann Ottinger is now and at relevant times was a judge in the King County District Court.

1 2. Admit that the Commission entered a censure on June
2 18, 2004. The Censure speaks for itself and Respondent will
3 not answer the averment with regard to its terms.

4 3. Respondent lacks sufficient information to form a
5 belief as to the truth of the averment that a complaint was
6 received by the Commission on July 7, 2004.

7 4. Respondent admits those matters contained in the
8 second paragraph (page 1, lines 16-27) of "Background."

9 5. Respondent lacks sufficient information to answer
10 the averment in the third paragraph (page 1, line 1; page 2,
11 lines 1-2) of "Background."
12

13 **II. Conduct Giving Rise to Charges**

14 6. Respondent admits that she has been charged with
15 violation of Canons 1, 2, and 3(A)(1) of the CJC, but denies
16 that she violated any of the Canons of the CJC.
17

18 7. With regard to those allegations contained in
19 Paragraph II (A), Respondent denies them, with the exception
20 of admitting that she did not announce her probable cause
21 findings **on the record** when imposing bail or conditions of
22 pretrial release in cases.
23

24 8. With regard to the allegations contained in
25 Paragraph II(B), Respondent denies these allegations.
26

1 9. With regard to the allegations contained in
2 Paragraph II(C), Respondent lacks sufficient information to
3 answer and therefore denies the same.
4

5 **III. Basis For Commission Action**

6 10. It is denied that probable cause exists to believe
7 that Respondent violated Canons 1, 2 and 3(A)(1) of the CJC.

8 **IV. Right To File A Written Answer**

9 11. The section of the Statement of Charges identified
10 as "IV. Right To File A Written Answer" is procedural in
11 nature and does not require either admission or denial.

12 **DEFENSES**

13
14 12. Respondent alleges the following defenses but by
15 doing so asserts that she is not required to do so by the
16 rules and that failure to identify any defense does not
17 constitute waiver of any additional defense which may be
18 raised in the future.

19 13. Presentation of the facts will demonstrate that
20 Respondent may have made an occasional error, as happens with
21 all judges, but she did not violate the Code of Judicial
22 Conduct and that at all time she conducted herself properly.

23
24 14. Respondent conducted many hearings, including
25 arraignments and first appearances of defendants in custody,
26 without the presence of a public defender or prosecutor. This

1 put a much heavier burden on Respondent in her efforts to
2 insure that the constitutional rights of a defendant were
3 protected, while at the same time attempting to handle a very
4 busy calendar, and also protecting the rights of alleged
5 victims by ensuring that defendants were only released with
6 appropriate bail and conditions. Most other courts in this
7 state that handle criminal matters have public defenders and
8 prosecutors in court during all hearings, and it is therefore
9 unnecessary for a judge to go through an extensive colloquy on
10 waiver of right to an attorney with each defendant, as the CJC
11 claims is necessary, since this is handled by the public
12 defender. The procedure outlined above placed Respondent in
13 situation where she did her best, under difficult
14 circumstances, to insure that defendants rights were
15 protected, while still attempting to handle her very full
16 calendars, to insure that all defendants would have their day
17 in court, without undue delay.

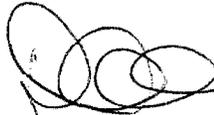
20 15. The burden of proof in a Commission hearing is
21 "clear, cogent and convincing" which requires that it be
22 "highly likely" that Respondent violated the Code of Judicial
23 Conduct. The Commission cannot meet its burden of proof in
24 this matter.
25
26

1 16. The cited provisions of the Code of Judicial Conduct
2 are too vague, in violation of the Fourteenth Amendment of the
3 United States Constitution and Art. 1, Section 3 of the
4 Washington State Constitution, to provide fair notice to
5 Respondent that her actions in conducting court constituted a
6 violation of the Code.
7

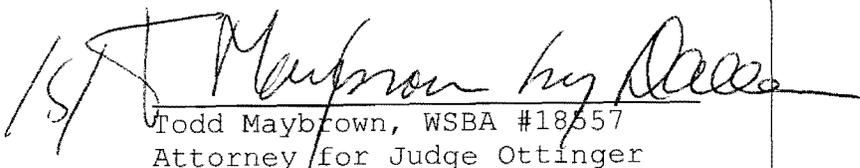
8 17. Respondent has been denied Due Process in violation
9 of the Fourteenth Amendment of the United States Constitution
10 and Art. 1, Section 3 of the Washington State Constitution by
11 the process in which this matter was investigated and ordered
12 to hearing by the Commission. Respondent was denied the
13 reasonable opportunity to respond in that she was not provided
14 all information known by the Commission to which she was being
15 held accountable and was not given meaningful access to the
16 Commission while it sat as a decision making body. During the
17 decision making sessions, Disciplinary Counsel had access to
18 the Commission through the Commission's investigator. The
19 Commission has been given information independently and
20 without knowledge of Respondent and any member who received
21 such information cannot now properly sit on any further
22 consideration of this case once he or she voted for probable
23 cause.
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1 WHEREFORE, having answered the Statement of Charges,
2 Respondent, the Honorable Mary Ann Ottinger, asks that all
3 charges against her be dismissed, with prejudice.

4 Dated this 29th day of June, 2005.

5
6 

7 David Allen, WSBA #500
8 Attorney for Judge Ottinger

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11 Todd Maybrown, WSBA #18557
12 Attorney for Judge Ottinger