

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

**FILED**  
JUN 14 2005  
COMMISSION ON JUDICIAL CONDUCT

3 In Re the Matter of )  
4                                    )  
5 The Honorable Mary Ann Ottinger, Judge )  
6 King County District Court, Eastern Division )

No. 4475-F-119

**STATEMENT OF CHARGES**

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**I. BACKGROUND**

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, Eastern Division. On June 18, 2004, the Commission censured Respondent for, among other misconduct, engaging in a pattern or practice of violating criminal defendants' fundamental constitutional and due process rights (CJC No. 3811-F-110, attached and incorporated by reference). On July 7, 2004, the Commission received a complaint. Investigation of the latter complaint resulted in the present charges.

On February 9, 2005, the Commission informed Respondent by letter that it had commenced initial proceedings against her. At that time, the Commission served on Respondent a Statement of Allegations invited a response, due three weeks after receipt of the Statement of Allegations. On March 7, 2005, Respondent requested an extension of time to respond until May 31, 2005. The Commission staff administratively extended the time to respond to March 31, 2005, pending the next meeting of the Commission on April 8, 2005. Respondent's preliminary response to the Statement of Allegations was dated March 29, 2005, and received at the Commission office on April 4, 2005. At the April 8, 2005 meeting, the Commission members agreed to further extend the time for supplemental response to the Statement of Allegations to April 29, 2005. Respondent was advised of this additional extension of time, but no further written response was received from Respondent.

At its executive session on June 10<sup>th</sup>, 2005, the Commission found that

1 probable cause exists to believe Respondent violated Canons 1, 2, and 3(A)(1) of the  
2 Code of Judicial Conduct.

## 3 **II. CONDUCT GIVING RISE TO CHARGES**

4 Respondent is charged with violating Canons 1, 2, and 3(A)(1) of the Code of  
5 Judicial Conduct by engaging in a pattern or practice of violating criminal defendants'  
6 fundamental and constitutionally-protected due process rights.

7 A. Respondent has repeatedly failed to comply with court rules and case  
8 law requiring full advisement of rights to counsel for criminal defendants  
9 at arraignments. In multiple cases, Respondent failed to properly advise  
10 criminal defendants of their right to counsel, of the maximum available  
11 penalties and other potential consequences of conviction, of their right  
12 to remain silent. Respondent has failed to make a finding of probable  
13 cause that a crime had been committed prior to imposing bail or  
14 conditions of pretrial release, in violation of CrRLJ 3.2.1(e)(2). Examples  
15 of such behaviors are illustrated by, but are not limited to, the following  
16 cases:

17 Phillip N. Cedarleaf, C7005 (hearing 8/17/04),

18 Patrick A. Tilley, C24072 & C24075 (hearings 8/17/04 &  
19 8/23/04),

20 Ryan S. Uhrich, C24252 (hearing 8/23/04),

21 Shawn A. Henry, C7054 (hearing 8/23/04),

22 Jeremy A. Remlinger, C6591 (hearing 8/24/04),

23 Michael S. Ferren, CR13080NB (hearing 10/6/04),

24 B. Respondent has repeatedly failed to properly accept guilty pleas from  
25 pro se defendants. Respondent consistently failed to advise defendants  
26 of the elements of the crimes to which they pled guilty; consistently failed  
27 to advise pro se defendants of the perils of pleading guilty without  
28 counsel, and consistently failed to determine the defendants'

1 understanding of the proceedings. These behaviors are illustrated by,  
2 but not limited to, the following examples:

3 Johnny Estacio, C2081 (hearing 8/25/04),

4 Joseph A. Rotarius, C2067 (hearing 10/20/04),

5 Joseph M. Garcia, Y40342683NB (hearing 11/15/04).

6 i. Respondent has also failed to advise non-citizen defendants  
7 that a plea of guilty to an offense punishable as a crime under  
8 state law is grounds for deportation, exclusion from the United  
9 States, or denial of naturalization (see RCW 10.40.200). This  
10 behavior is illustrated by, but not limited to, the following example:

11 Jorge Vazquez-Ortiz, C4022SQL (hearing 6/30/04).

12 C. Respondent has repeatedly failed to inform individuals at probation  
13 revocation proceedings of their rights to counsel (and/or to advise them  
14 of the perils of proceeding without counsel), and has failed to advise  
15 them of their rights to contest the allegations against them at a probation  
16 hearing where jail time could be imposed. These behaviors are  
17 illustrated by, but not limited to, the following examples:

18 Adam G. Griffin, C23675 (hearing date 8/31/04),

19 Ryan D. Carter, CQ30353NB (hearing date 8/31/04).

### 20 **III. BASIS FOR COMMISSION ACTION**

21 On June 10, 2005, the Commission determined probable cause exists to believe  
22 that Respondent has violated Canons 1, 2, and 3(A)(1) of the Code of Judicial Conduct  
23 (CJC). These sections of the Code state:

#### 24 **CANON 1**

#### 25 **Judges shall uphold the integrity and 26 independence of the judiciary.**

27 An independent and honorable judiciary is indispensable to justice  
28 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

1 judiciary will be preserved. The provisions of this Code are to be  
2 construed and applied to further that objective.

3 *Comment*

4 *Deference to the judgments and rulings of courts depends upon public confidence in the*  
5 *integrity and independence of judges. The integrity and independence of judges depends in turn upon*  
6 *their acting without fear or favor. Although judges should be independent, they must comply with*  
7 *the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary*  
8 *is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code*  
9 *diminishes public confidence in the judiciary and thereby does injury to the system of government*  
10 *under law.*

11 **CANON 2**

12 **Judges should avoid impropriety and the appearance of impropriety**  
13 **in all their activities.**

14 (A) Judges should respect and comply with the law and should  
15 act at all times in a manner that promotes public confidence in the  
16 integrity and impartiality of the judiciary.

17 (B) Judges should not allow family, social, or other  
18 relationships to influence their judicial conduct or judgment. Judges  
19 should not lend the prestige of judicial office to advance the private  
20 interests of the judge or others; nor should judges convey or permit  
21 others to convey the impression that they are in a special position to  
22 influence them. Judges should not testify voluntarily as character  
23 witnesses.

24 *Comment*

25 *Maintaining the prestige of judicial office is essential to a system of government in which the*  
26 *judiciary functions independently of the executive and legislative branches. Respect for the judicial*  
27 *office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish*  
28 *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.*

**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.

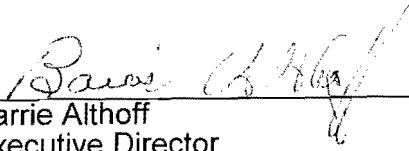
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**IV. RIGHT TO FILE A WRITTEN ANSWER**

In accordance with CJCRP 20, Respondent may file a written answer to this Statement of Charges with the Commission and serve a copy on Disciplinary Counsel in this case, Paul Taylor, 1000 2nd Ave., Suite 3800, Seattle, WA 98104-1046, by July 5, 2005.

DATED this 10<sup>th</sup> day of July 2005.

COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON

  
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Barrie Althoff  
Executive Director  
P.O. Box 1817  
Olympia, WA 98507

**FILED**  
JUN 18 2004  
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	)	CJC No. 3811-F- <sup>110</sup> <del>109</del>
King County District Court East Division	)	STIPULATION, AGREEMENT AND ORDER OF CENSURE

The Commission on Judicial Conduct and the Honorable Mary Ann Ottinger, Judge of the King County District Court, East Division, 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 unless and until approved by the Washington Commission on Judicial Conduct.

The Commission on Judicial Conduct is represented in these proceedings by its disciplinary counsel, Paul Taylor. The Honorable Mary Ann Ottinger is represented by Anne Bremner.

**I. STIPULATED FACTS**

**A. Pattern or Practice of Failing to Observe Defendants' Fundamental Due Process Rights**

1. The Honorable Mary Ann Ottinger, Respondent, was at all times discussed herein a judge of the King County District Court (KCDC), assigned to what is now the East Division of that court. Prior to the reorganization of the KCDC in 2002, she served as the sole judge in the Issaquah District Court where she was first appointed in 1992.

2. In the case of the State v. Sara Totten, 183992A, Respondent failed on multiple occasions to properly advise the unrepresented defendant of her right to court-appointed counsel. Respondent failed to advise defendant of the elements of the crime, of the maximum

1 available penalties and other potential consequences of conviction, and failed to utilize a  
2 written statement of defendant on plea of guilty form, as required by CrRLJ 4.2. Respondent  
3 similarly failed to advise unrepresented defendants of their due process rights in numerous  
4 other cases.

5 3. The Commission contacted Respondent with concerns about the adequacy of  
6 her rights advisement procedures in 2002. In response, Respondent represented that she  
7 would correct her plea acceptance and rights advisement practices in the future to comply  
8 with CrRLJ 4.2 and Washington law.

9 4. Respondent thereafter continued to improperly advise defendants of their rights  
10 prior to requiring defendants to enter a plea. Specifically, Respondent routinely failed to  
11 advise unrepresented defendants of various rights, including but not limited to: (i) the perils  
12 of proceeding without counsel, (ii) the right to remain silent, and that anything the accused  
13 says may be used against him or her. Respondent also failed to orally make a determination  
14 of probable cause prior to imposing conditions of pretrial release (CrRLJ 3.2.1(e)(2)). While  
15 Respondent would subsequently advise a defendant who pled guilty that such plea would not  
16 be accepted until a later hearing to afford the opportunity to consult counsel, she  
17 acknowledges that this practice is inconsistent with CrRLJ 4.2 and that, as noted by the State  
18 Supreme Court in *In re Hammermaster*, 139 Wn.2d 211, 236 (1999):

19 The law is clear that a judge has a duty to ensure that guilty pleas  
20 are knowingly, voluntarily, and intelligently made. *Boykin v.*  
21 *Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969).  
22 At a minimum, this requires the defendant be apprised of the  
23 essential elements of the offense as well as any mandatory  
24 minimum sentence and the statutory maximum. *State v.*  
25 *Holsworth*, 93 Wash. 2d 148, 607 P.2d 845 (1980).  
26

1 B. Improper Provision of Legal Assistance to a Municipality.

2 5. Respondent improperly provided legal assistance to the City of Issaquah, and  
3 other municipalities she serves as a KCDC judge for the East Division, in their dispute with  
4 King County related to the reorganization and utilization of judicial resources for her division.  
5 In addition to providing research and legal advice, Respondent secretly "ghost wrote"  
6 correspondence for the City of Issaquah to be submitted to King County without reference or  
7 attribution to her. She also actively urged the City of Issaquah to sue King County.

8 C. Intemperate Treatment of Court Staff.

9 6. The Commission has information that it believes would tend to prove that  
10 Respondent violated Canon 3(A)(3) in her intemperate treatment of court staff members.  
11 Respondent denies this occurred. Both parties agree, in lieu of litigating the matter, that  
12 Respondent shall undergo management training as provided herein.

13 **II. AGGRAVATING/MITIGATING FACTORS**

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

16 a. Whether the misconduct is an isolated instance or evidence of a pattern of  
17 misconduct.

18 The conduct described in Paragraph 1A was not an isolated incident and constituted a  
19 policy or practice that Respondent has followed for years.

20 b. The nature, extent, and frequency of occurrence of the acts of misconduct.

21 The nature, extent and frequency of the due process violations, in particular, have been  
22 significant. Hearing tapes suggest that the deficient due process advisement practices were  
23 routine for Respondent. Because the practices implicate the Constitutional rights of the  
24 defendants involved, the nature of the violations cannot be overstated.

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c. Whether the misconduct occurred in or out of the courtroom.

The due process advisement practices in question were conducted in the courtroom. The remainder of the above conduct occurred outside the courtroom, but was still closely associated with Respondent's professional duties.

d. Whether the misconduct occurred in the judge's official capacity or in the judge's private life.

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

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

The extent to which Respondent's failure to properly advise defendants of their rights has had a substantial impact on the rights of the defendants involved. For example, Sara Totten, then 19 years of age and without any other criminal record, was ultimately ordered to spend a year in jail on an original charge of minor in possession of alcohol. Respondent's actions in providing clandestine legal advice to municipalities, in itself constituting the improper practice of law, exacerbated the conflict inherent in the redistribution of resources in the court system.

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

Respondent's position is that her legal assistance to the City of Issaquah in its dispute with King County was not motivated by any personal desires. Respondent's position is that she was motivated by her perceived obligation to the people of Issaquah who originally voted for her. Such motivation does not, however, entitle her to engage in the practice of law, which is prohibited for a full-time judge, nor does it override her responsibilities to the King County District Court.

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

Protecting the rights of accused individuals is one of the highest duties of any judicial officer. Respondent's failure to adequately perform that duty calls into question the integrity of

1 her office. In addition, judicial officers are required to protect the appearance of their  
2 impartiality.

3 h. Whether the judge has acknowledged or recognized that the acts occurred.

4 Respondent acknowledges that the acts occurred and that she violated the Code of  
5 Judicial Conduct.

6 i. Whether the judge cooperated with the Commission investigation and proceeding.

7 Respondent has cooperated in the negotiation of this Stipulation and Agreement.

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

9 Under the terms of this Stipulation and Agreement, Respondent acknowledges her  
10 need to change or modify the conduct in question and represents that she will do so, consistent  
11 with the requirements listed further below.

12 k. The judge's length of service in a judicial capacity.

13 Respondent has served on the bench for 12 years.

14 l. Whether there has been prior disciplinary action concerning the judge.

15 Respondent has no previous disciplinary actions.

### 16 III. AGREEMENT

17 1. Respondent stipulates that the conduct described above violated Canons 1, 2,  
18 and 3 (A)(1) of the Code of Judicial Conduct.

19 2. Respondent stipulates that based upon such conduct, the Commission could  
20 impose a sanction in accordance with these rules.

21 3. Respondent stipulates to the acceptance of an order of censure. A censure is a  
22 written action of the Commission that finds that the conduct of the Respondent violates a rule  
23 or rules of judicial conduct, detrimentally affects the integrity of the judiciary, and  
24 undermines public confidence in the administration of justice.

25 4. Respondent agrees that she will participate in training, approved in advance by  
26 the Commission, related to the proper administration of her court, including proper

1 procedures for rights advisement related to accepting pleas and imposing probationary terms  
2 and conditions. Specifically, she will attend and complete coursework at the National Judicial  
3 College, accredited law school or judicial seminar, or a similar institution/program in such  
4 matters no later than one year from the date this stipulation is accepted by the Commission.  
5 Respondent agrees she will complete such training at her own expense and will certify the  
6 completion of such training in writing within a year of the acceptance of this Stipulation and  
7 Agreement by the Commission.

8 5. Respondent further agrees that she will complete counseling at her own  
9 expense approved in advance by the Commission to address her management practices. She  
10 will likewise certify to the Commission within a year of the acceptance of this Stipulation and  
11 Agreement that she has actively engaged in such counseling.

12 6. Respondent agrees and stipulates further that she shall not engage in any  
13 retaliatory conduct with regard to any person known or suspected by her to have cooperated  
14 with the Commission on Judicial Conduct, or otherwise associated with this matter.

15 7. Respondent and her counsel stipulate that they will make no statements  
16 denying, or attempting to excuse or minimize, the conduct set forth herein.


17 8. Respondent stipulates further that by entering into this Stipulation, she hereby  
18 waives any procedural and appeal rights pursuant to the Commission on Judicial Conduct  
19 Rules of Procedure and Article IV, Section 31 of the Washington State Constitution in this  
20 proceeding.


21 9. The Commission stipulates that in exchange for this agreement by Respondent,  
22 and conditioned upon Respondent's fulfillment of the conditions of this Agreement, the  
23 Commission will take no further action on any of the matters contained in its Statement of  
24 Allegations dated July 2, 2003.

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DATED this 30<sup>th</sup> day of April, 2004.

  
Honorable Mary Ann Ottinger

  
Anne M. Bremner, WSBA #13269  
Attorney for Respondent

  
Paul R. Taylor, WSBA #14851  
Disciplinary Counsel, 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	)	CJC No. 3811-F-109
King County District Court Eastern Division	)	ORDER OF CENSURE

Based upon the annexed Stipulation and Agreement, the Commission on Judicial Conduct hereby Orders Judge Mary Ann Ottinger CENSURED for violating Canons 1, 2, and 3 (A)(1) of the Code of Judicial Conduct. Respondent shall fulfill all of the terms of the Stipulation and Agreement as set forth therein.

Dated this 18<sup>th</sup> day of JUNE, 2004.

  
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 K. Collins Sprague, Chair  
 Commission on Judicial Conduct