

FILED
OCT - 3 2006
COMMISSION ON JUDICIAL CONDUCT

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

In Re the Matter of:
The Honorable Kenneth L. Jorgensen,
Judge of the Grant County Superior Court

CJC No. 4780-F-126

**STIPULATION, AGREEMENT
AND ORDER OF REPRIMAND**

The Commission on Judicial Conduct and Kenneth L. Jorgensen, Judge of the Grant County Superior Court, stipulate and agree as provided herein. This stipulation is submitted pursuant to Article IV, Section 31 of the Washington Constitution and Rule 23 of the Commission's Rules of Procedure and shall not become effective until approved by the Washington Commission on Judicial Conduct.

I. STIPULATED FACTS

1. Judge Kenneth L. Jorgensen (Respondent) is now, and was at all times referred to in this document, a Grant County Superior Court Judge. Respondent has served as a superior court judge for Grant County since 1992.

2. On June 25, 2005, the single mother of a five year-old child, A.S., unexpectedly passed away. Unbeknownst to Respondent at the time, A.S. had been living with her mother in Coulee City, Washington. A.S.'s grandmother lived in a separate residence in the same town and her aunt, W.O., lived a few miles out of town. A.S.'s biological father lived in a different part of the state. He had seen the child once in seven months.

3. On June 27, 2005, learning that A.S.'s mother had passed away, A.S.'s biological father sought the assistance of the court to obtain immediate custody of A.S. by filing a petition for a writ of habeas corpus in the Grant County Superior Court. The petition alleged A.S. was then in the custody of her aunt, W.O.

1 4. Respondent signed an order issuing the writ of habeas corpus on June 27,
2 2005. The writ directed Ms. O. to bring A.S. to court the following morning at 9:00 a.m. for
3 a hearing to determine whether A.S. ought to be immediately delivered into her father's
4 custody. Such a writ requires the person served to appear in court, on pain of incarceration
5 for failure to appear. The writ is to be directed to the individual who has physical custody of
6 the child.

7 5. Ms. O. was served with the writ of habeas corpus in the afternoon of June 27,
8 2005. That evening, she arranged to have a local attorney represent her at the hearing
9 scheduled for the following morning.

10 6. On June 28, 2005, at approximately 8:50 a.m., Ms. O., while waiting outside
11 Respondent's courtroom for her attorney to arrive for the 9:00 a.m. hearing, was told by a
12 court clerk that the court was ready to commence the hearing on the writ of habeas corpus.
13 Ms. O. responded that she was waiting for her attorney to arrive. The clerk instructed her to
14 wait for her attorney in Respondent's courtroom. Ms. O. entered Respondent's courtroom
15 shortly after 8:50 a.m.

16 7. Respondent began the writ hearing prior to the time the hearing was scheduled
17 to start because he was advised by court staff the parties were present.

18 8. When the matter was called and Ms. O. was taking her seat at counsel table,
19 she stated that she was waiting for her attorney to arrive. Due to the exigency of the matter,
20 Respondent did not have notice before that time that any party to the hearing was represented
21 by counsel.

22 9. Despite learning from Ms. O. that she was represented by counsel, Respondent
23 proceeded with the hearing in the absence of Ms. O's attorney and prior to the noted time for
24 the hearing. Respondent identified the parties, and since the child did not appear to be
25 present, Respondent asked the whereabouts of the child. Ms. O. explained that the child was
26 in the custody of her grandmother. Respondent questioned Ms. O. as to why she did not have
27 the child with her. Respondent then threatened to incarcerate whoever had the child, even
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1 though the writ had been directed to Ms. O., who stated she did not have custody of the child.
2 At that point, Ms. O. again urged that further discussion await her attorney. After a statement
3 by the biological father and a reply by Ms. O., Ms. O.'s attorney arrived.

4 10. Ms. O.'s attorney entered Respondent's courtroom for the 9 a.m. scheduled
5 hearing at approximately 8:56 a.m. At that time, Respondent was still engaged in the hearing,
6 asking about matters relevant to the subject matter of the proceeding.

7 8 **II. AGREEMENT**

9 **A. Respondent's Conduct Violated the Code of Judicial Conduct.**

10 1. Respondent agrees that if this matter were to proceed to a hearing the
11 Commission could find based upon the foregoing stipulated facts that Respondent violated
12 Canons 1, 2(A) and 3(A)(4) of the Code of Judicial Conduct.

13 2. Canons 1 and 2(A) require judges to uphold the integrity of the judiciary by
14 avoiding impropriety and the appearance of impropriety and by acting at all times in a manner
15 that promotes public confidence in the integrity and impartiality of the judiciary. Canon
16 3(A)(4) requires judges to accord every person with a legal interest in a proceeding a full right
17 to be heard according to law. By conducting a court proceeding and questioning a party
18 whom he knew to be represented about the subject matter at issue in the proceeding in the
19 absence of counsel for that party, Respondent interfered with Ms. O.'s right to counsel and
20 denied Ms. O. her right to be fully heard according to law. It is particularly important that a
21 judge scrupulously honor a person's right to counsel when, as was the case here, jail was
22 being threatened.

23 **B. Imposition of Sanction.**

24 1. The sanction imposed by the Commission must be commensurate to the level
25 of Respondent's culpability, sufficient to restore and maintain the public's confidence in the
26 integrity of the judiciary, and sufficient to deter similar acts of misconduct in the future. In
27 determining the appropriate level of discipline to impose, the Commission must consider the

1 non-exclusive factors set out in Rule 6(c) of its Rules of Procedure.

2 a. Mitigating Factors. Respondent has acknowledged that the acts
3 occurred. He recognizes that once he was informed that Ms. O. was represented by an
4 attorney he should have suspended the hearing and waited a reasonable amount of time for
5 her attorney to arrive, particularly since he began the hearing before its scheduled start time.
6 Respondent has cooperated with the Commission's investigation. This appears to have been
7 an isolated instance over a period of about ten years, and not a pattern of conduct.
8 Respondent did not exploit his judicial position to satisfy personal desires. Finally, while
9 deprivation of legal representation can lead to serious consequences for someone in court,
10 Respondent's actions were not particularly injurious to Ms. O. in that the time at issue was
11 relatively brief, and her attorney arrived while the hearing was still occurring and was able
12 to revisit the issues discussed in her absence.

13 b. Aggravating Factors. The conduct at issue occurred on the bench in
14 Respondent's official capacity. His conduct exacerbated a highly emotional situation, and
15 caused a significant loss of confidence in the integrity of the judiciary for some of the
16 individuals involved. The law proscribing the misbehavior in which Respondent engaged is
17 clear, and his failures to abide by these clear and determined ethical standards demonstrate
18 an unacceptable laxity toward his ethical obligations. Respondent was previously disciplined
19 by the Commission in 1996, for, among other things, a violation of Canon 3(A)(4). As part
20 of his stipulated sanction in the 1996 disciplinary matter, Respondent undertook extensive
21 remedial training to address his judicial competency in, among other areas, the civil rules of
22 procedure. Given this history, Respondent should be attentive to according litigants their full
23 rights to be heard according to law, particularly in ways that respect Canon 3(A)(4).
24 Respondent's failure to recognize the litigant's right to representation by her attorney and to
25 act accordingly in the current matter, even after the earlier sanction, is a strong aggravating
26 factor.

27 2. Based upon the stipulated facts, upon consideration and balancing of the above

28 **STIPULATION, AGREEMENT AND ORDER OF REPRIMAND - 4**

1 factors, Respondent and the Commission agree that Respondent's stipulated misconduct shall
2 be sanctioned by the imposition of a reprimand. A "reprimand" is a written action of the
3 Commission that requires Respondent to appear personally before the Commission and that
4 finds that the conduct of Respondent is a violation of the Code of Judicial Conduct, but does
5 not require censure or a recommendation to the Supreme Court that Respondent be suspended
6 or removed. A reprimand shall include a requirement that Respondent follow a specified
7 corrective course of action. Reprimand is the intermediate level of disciplinary action
8 available to the Commission.

9 3. Respondent agrees that he will not repeat such conduct in the future, mindful
10 of the potential threat any repetition of his conduct poses to public confidence in the integrity
11 and impartiality of the judiciary and to the administration of justice.

12 4. Respondent agrees he will promptly read and familiarize himself with the
13 Code of Judicial Conduct in its entirety.

14 5. Respondent agrees he will complete a course on judicial ethics at his expense
15 approved in advance by the Commission's Chair or his/her designee and provide proof of
16 completion of the course within one year of the date this stipulation is entered.

17 Standard Additional Terms and Conditions

18 6. Respondent agrees that by entering into this stipulation and agreement, he
19 waives his procedural rights and appeal rights in this proceeding pursuant to the Commission
20 on Judicial Conduct Rules of Procedure and Article IV, Section 31 of the Washington State
21 Constitution.

22 7. Respondent acknowledges and represents that he either consulted or has had
23 an opportunity to consult with counsel of his choosing regarding this stipulation and
24 proceeding. Respondent represents he voluntarily enters into this stipulation and agreement.

25 8. Respondent further agrees that he will not retaliate against any person known

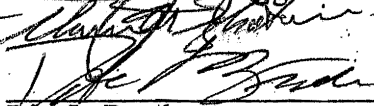
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2 or suspected to have cooperated with the Commission, or otherwise associated with this
3 matter.

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6 
7 Hon. Kenneth L. Jorgensen

10-3-06
Date

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9 Rita L. Bender
10 Disciplinary Counsel for
11 Commission on Judicial Conduct

10/3/06
Date

12 **ORDER OF REPRIMAND**

13 Based on the above Stipulation and Agreement, the Commission on Judicial Conduct
14 hereby orders Respondent, Judge Kenneth L. Jorgensen, reprimanded for the above set forth
15 violations of the Code of Judicial Conduct. Respondent shall not engage in such conduct in
16 the future and shall fulfill all of the terms of the Stipulation and Agreement as set forth
17 therein.

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19 DATED this 3RD day of OCTOBER, 2006

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23 ~~Marianne Connelly, Chair~~ Jerry Roach
24 Commission on Judicial Conduct