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COMMISSION ON JUDICIAL CONDUCT

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

In Re the Matter of:

CJC No. 4880-F-129

The Honorable Robert D. Austin,
Judge of the Spokane County
Superior Court

**STIPULATION, AGREEMENT
AND ORDER OF
ADMONISHMENT**

The Commission on Judicial Conduct and Robert D. Austin, Judge of the Spokane 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 Robert D. Austin (Respondent) is now, and was at all times referred to in this document, a Judge of the Spokane County Superior Court. Respondent has served in that capacity since January 1989. Prior to becoming a judge, Respondent served as a superior court commissioner since December 1982.

2. In November of 2005, the Commission on Judicial Conduct received a complaint alleging Respondent criticized jurors for their verdict following the conclusion of a criminal trial. After an independent investigation, the Commission commenced initial proceedings in February 2006, by contacting Respondent and serving him with a Statement of Allegations. The Statement of Allegations alleged that, on November 14, 2005, after a jury rendered a guilty verdict in cause number 05-1-00933-1, Respondent spoke with jurors in the jury room and indicated to them that he believed the defendant was not guilty and that the jury reached an incorrect verdict.

3. Respondent answered the Statement of Allegations on March 27, 2006. Respondent acknowledged that he spoke with jurors in the jury room after their verdict and

1 indicated to them that he was surprised by their verdict. Respondent's recollection was that
2 he informed the jurors that earlier in the day and outside of their presence, he had ruled on a
3 motion to dismiss for lack of evidence. He told them that he had been inclined to dismiss the
4 case, but felt confident that the jury would not convict, so he left it to the jury to resolve at that
5 time; however, since they did convict, he would have to deal with further motions. Respondent
6 acknowledged that he discussed the nature of the motion with the jurors and explained its
7 merits. Respondent again told the jurors he expected further motions as a result of their
8 verdict. Respondent stated he did not intend for his comments to be interpreted as a criticism
9 of the verdict at the time he made them and believed, in good faith, that his comments were
10 appropriate. However, on reflection, Respondent acknowledges that it is understandable that
11 some jurors interpreted his comments as critical of their decision.

12 4. As is naturally the case, the recollection of the jurors is not exactly consistent
13 with that of Respondent, nor with each other. With regard to how the Respondent's post-
14 verdict comments impacted the jurors who were present, the Commission's investigation
15 revealed that several jurors became concerned about whether they had reached the correct
16 verdict. Most of the jurors recall that Respondent questioned them on how they reached their
17 verdict and indicated to them that he felt there was not enough evidence to convict the
18 defendant. Some were remorseful to the extent that they expressed the desire never to serve
19 as jurors again. The majority of jurors who heard Respondent's comments interpreted those
20 comments as suggesting they had reached the wrong verdict. This stipulation takes into
21 account both Respondent's recollection of what he said and the various jurors' recollections.

22 **II. AGREEMENT**

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

24 1. Based upon the foregoing stipulated facts, Respondent agrees that at a fact-
25 finding hearing the Commission could find by clear and convincing evidence that he violated
26 Canons 1, 2(A) and 3(A)(8) by making comments to jurors, immediately after they had
27 rendered their verdicts, that reasonably created the impression in the minds of the jurors that
28 they reached the wrong verdict, and had failed the system and/or disappointed the judge.

1 2. Canons 1 and 2(A) require judges to uphold the integrity of the judiciary by
2 avoiding impropriety and the appearance of impropriety and by acting at all times in a manner
3 that promotes public confidence in the integrity and impartiality of the judiciary. Canon
4 3(A)(8) prohibits judges from commending or criticizing jurors for their verdict other than in
5 a court order or opinion in a proceeding. Such comments are prohibited for at least two
6 reasons, as explained in the comment to the Canon: "Commending or criticizing jurors for their
7 verdict may imply a judicial expectation in future cases and may impair a juror's ability to be
8 fair and impartial in a subsequent case."

9 **B. Imposition of Sanction.**

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

13 2. In determining the appropriate level of discipline to impose, the Commission
14 considers the factors set out in Rule 6(c) of its Rules of Procedure.

15 a. Characteristics of the Misconduct.

16 Respondent's violation of the Code of Judicial Conduct occurred in the courthouse,
17 while Respondent was acting in his official capacity. The violation had a negative effect on
18 a number of the jurors, and thus to the operation of the justice system as a whole. There is no
19 indication that Respondent exploited his judicial position to satisfy personal desires.
20 Respondent maintains, and the Commission has no reason to dispute, that the behavior
21 complained of in this matter was not in any way an intentional departure from the high standard
22 of judicial conduct which may properly be expected from Respondent. Respondent has served
23 as a superior court judge for over 17 years and has received positive feedback from many jurors
24 who have served in his court. Respondent did not intentionally seek to criticize any jurors for
25 their verdict and did not realize the lasting impact his comments were having on some jurors.
26 However, the independent investigation of the Commission reveals that many jurors recall
27 feeling as though Respondent had questioned their verdict, and, as a result, they felt they had
28 had an overall negative experience as jurors. Though Respondent's demeanor was calm and

1 professional when he made his comments, the impact of his comments demonstrates he should
2 not have made them at all. Jurors should not be discouraged by a judge's comments from
3 engaging in the arduous public service and sacrifice that jury service can be.

4 b. Service and Demeanor of Respondent.

5 Respondent has cooperated with the Commission's investigation. He acknowledges
6 that the acts occurred, that they were inappropriate and that they violated the Code of Judicial
7 Conduct. Respondent has been a judicial officer for 23 years and has had no prior disciplinary
8 actions against him. Respondent has provided information to the Commission about his
9 contributions to the improvement of the judiciary, including his participation with the Superior
10 Court Judges Association Education Committee, the Supreme Court's task force for mandatory
11 ethics and education, the Superior Court Judges Board of Trustees, and as a speaker at several
12 judicial education events. Respondent has also provided the Commission with feedback from
13 jurors over the years expressing appreciation for the positive and professional manner with
14 which he presided over trials. Since being contacted by the Commission on this matter,
15 Respondent has recognized the need to change certain behaviors. While recognizing there is
16 value to speaking as a judge with jurors serving the court system, he has begun taking steps to
17 limit his contact with jurors to avoid repeating the problematic behavior identified in these
18 proceedings. He has thus demonstrated a sincere effort to modify his conduct.

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 an admonishment. An "admonishment" is a written action
22 of the Commission of an advisory nature that cautions a respondent not to engage in certain
23 proscribed behavior. An admonishment may include a requirement that the respondent follow
24 a specified corrective course of action. Admonishment is the least severe disciplinary action
25 available to the Commission.

26 Standard Additional Terms of Commission Stipulation

27 4. Respondent further agrees he will not retaliate against any person known or

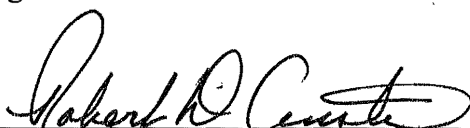
1 suspected to have cooperated with the Commission, or otherwise associated with this matter.

2 5. Respondent agrees he will not repeat such conduct in the future, mindful of the
3 potential threat any repetition of his conduct poses to public confidence in the integrity and
4 impartiality of the judiciary and to the administration of justice. This does not mean, however,
5 that Respondent is prohibited from meeting with juries at the conclusion of cases. The
6 Commission recognizes that these meetings can be valuable to both jurors and judges. Such
7 meetings must occur with the understanding that jury service is a unique experience for the
8 jurors, while for judges it can become routine. Given his over two decades of service as a
9 judicial officer, it is possible that Respondent has become less cognizant of the enormous
10 impact of his words on jurors who only serve once or twice in a lifetime. For this reason,
11 Respondent, when speaking with juries, must be cautious and ever mindful of the proscriptions
12 in Canon 3(A)(8).


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

15 7. Respondent represents he either consulted or had an opportunity to consult with
16 counsel of his choosing regarding this stipulation and proceeding. Respondent voluntarily
17 enters into this stipulation.

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

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23 
24 Hon. Robert D. Austin

23 July 23, 2006
Date

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25 
26 J. Reiko Callner
27 Executive Director
28 Commission on Judicial Conduct

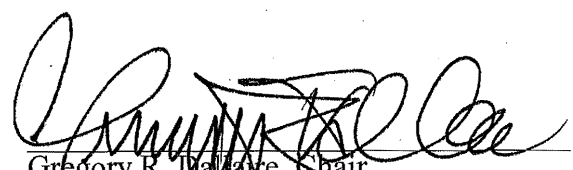
25 July 31, 2006
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ORDER OF ADMONISHMENT

Based on the above Stipulation and Agreement, the Commission on Judicial Conduct finds that Respondent, Judge Robert D. Austin, has violated Canons 1, 2(A), and 3(A)(8) of the Code of Judicial Conduct, and is hereby admonished 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 4TH day of AUGUST 2006


Gregory R. D'Amore, Chair
Commission on Judicial Conduct