

**FILED**

AUG 4 2006

COMMISSION ON JUDICIAL CONDUCT

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

In Re the Matter of:

The Honorable David B. Ladenburg,  
Judge of the  
Tacoma Municipal Court

CJC No. 4939-F-130

**STIPULATION, AGREEMENT  
AND ORDER OF  
ADMONISHMENT**

The Commission on Judicial Conduct and David B. Ladenburg, judge of the Tacoma Municipal 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. Judge Ladenburg has been represented in these proceedings by Attorney J. Richard Creatura.

**I. STIPULATED FACTS**

1. Judge David B. Ladenburg (Respondent) is now, and was at all times referred to in this document, a Judge of the Tacoma Municipal Court. Respondent has served in that capacity since January, 2003.

2. In January of 2006, the Commission on Judicial Conduct (Commission) received a complaint alleging Respondent required a woman who was attending court in support of a relative to either remove the head scarf she wore for religious reasons or leave his courtroom. After an independent investigation, the Commission commenced initial proceedings in April 2006, by contacting Respondent and serving him with a Statement of Allegations. The Statement of Allegations alleged that, on January 25, 2006, Respondent required a woman who was wearing a head covering that she said she wore for religious reasons to either remove the head covering or leave the courtroom. It was alleged

Respondent's actions and attendant comments created an appearance of bias or prejudice against this person, whom Respondent understood to be Muslim. After the woman left the courtroom, Respondent explained on the record in open court that he had "invited many people in the past to present me some evidence with regard to whether or not the Muslim religion would require" removal of head coverings in court and concluded "that that particular religious denomination honors governmental institutions and institutions of law and has no particular proscription against removal of head covers for that purpose."

3. Respondent answered the Statement of Allegations on May 17, 2006. Respondent admitted that he required the woman wearing a traditional head scarf to leave his courtroom after she indicated that she would not, because of her religious beliefs, remove it. He explained that he had a policy that required everyone in his courtroom to remove any head covering, unless he was presented evidence that removing a head covering was prohibited for religious or medical reasons. Respondent acknowledged he had not fully considered that his policy might infringe upon individuals' First Amendment right to free exercise of religion. He admitted he had not realized that the law is well-settled that it is the person exercising his or her sincere religious belief, not the judge, who decides what their religion requires of them. Respondent further acknowledged that, prior to this incident, he was incorrect in his interpretation of the law.

## **II. AGREEMENT**

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

1. Based upon the foregoing stipulated facts, Respondent and the Commission agree that Respondent violated Canons 1, 2(A), and 3(A)(1) by requiring a woman wearing a religious head covering to remove it or leave his courtroom. Respondent's failure to understand and adhere to a well-settled principle of First Amendment law infringed upon an individual's fundamental right to religious freedom and consequently, under the circumstances here, created an appearance that he was biased against people of the Muslim religion.

2. Canons 1 and 2(A) require judges to uphold the integrity of the judiciary by

avoiding impropriety and the appearance of impropriety and by acting at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 3(A)(1) requires that judges be faithful to the law and maintain professional competence in it. Canon 3(A)(5) requires that judges perform judicial duties without bias or prejudice. The facts here do not establish actual impropriety under Canon 3(A)(5), as all the evidence indicates that the judge made a mistake of law and was not motivated by bias or prejudice. Nonetheless, his ruling did create an appearance of impropriety with respect to that canon. The Code of Judicial Conduct deals not only with subjective intent, but also with appearances. Public confidence in the integrity and impartiality of the judiciary is undermined when a judge's conduct creates in the mind of a reasonable person the perception that the judge is exercising bias or prejudice, regardless of whether the perceived bias or prejudice exists. While judges should take reasonable steps to maintain decorum in their courtroom, they may not abridge constitutionally protected rights to religious liberty absent a clear threat to public safety, peace or order. As Respondent acknowledged in his answer to the Statement of Allegations, tolerance and respect for all religious traditions is needed at all times, and particularly at the present point in history. Judges have an affirmative obligation to be cognizant of whether their policies or orders infringe on the constitutional rights of those affected by them. Respect for these rights should be demonstrated by our government institutions, and particularly by the justice system with its overarching mandate to uphold the constitution.

**B. Imposition of Sanction.**

1. A judge's honest but mistaken application of the law does not usually result in judicial discipline. Here, however, Respondent failed to consider settled law, which resulted in a courtroom practice that infringed upon constitutional rights and created an appearance of bias. Accordingly, Respondent's actions rise to the level of sanctionable conduct. The sanction imposed by the Commission must be commensurate to the level of Respondent's culpability, sufficient to restore and maintain the public's confidence in the integrity of the judiciary, and sufficient to deter similar acts of misconduct in the future.

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

a. Characteristics of the Misconduct.

Respondent's violation of the Code of Judicial Conduct occurred in the courtroom, while Respondent was acting in his official capacity. His actions denied a person her right of access to court and, although he did not intend to do so, publicly humiliated her by making her feel as though she had been discriminated against based on her religious beliefs. Respondent's actions also brought disrepute to the judiciary, in part as a result of media coverage and commentary about the incident. Respondent's transgression does not appear to have been an isolated occurrence. It was Respondent's practice to require all persons in court to remove head coverings or leave the courtroom, as this was not a restriction he placed solely upon people who covered their heads for religious reasons. The Commission's investigation revealed that this blanket policy may have led to other persons choosing to leave Respondent's courtroom rather than remove their religious head covering.

There is no indication that Respondent exploited his judicial position to satisfy personal desires. Respondent maintains, and the Commission has no reason to dispute, that the acts complained of in this matter were not intended to give offense or to violate the law. Respondent's demeanor in the instance in question was calm and his language was not derisive. His consistent position has been that his conduct was motivated by a sincere, but mistakenly-applied, desire to maintain decorum in his courtroom. Respondent, according to many lawyers who appear regularly before him, is fair and respectful to all people appearing in his court, regardless of their ethnic or religious background. All witnesses contacted in the Commission's investigation who have appeared before, or work with, Respondent expressed the opinion that he is not a biased person, nor does he treat people of the Muslim faith or anyone else unfairly. Excluding this incident, his reputation has been of a judge who is fair to all who appear before him and who has a strong sense of justice. Since being contacted by the Commission, however, he promptly and readily admits that it is indisputable that the law does

not support his past practice, as it infringed upon the fundamental constitutional rights of people attending his courtroom.

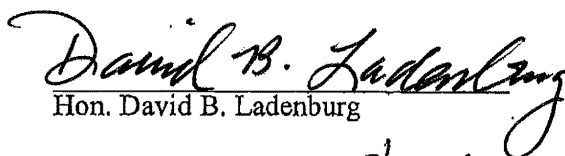
b. Service and Demeanor of Respondent.

As soon as the matter was brought to his attention and he reviewed the law, Respondent acknowledged his legal error, changed his practice, and publicly apologized for any embarrassment he caused to the woman. The Seattle office of the Council on American-Islamic Relations, the group that first brought this issue to Respondent's attention, stated their satisfaction with his response in a February 1, 2006 news release (seven days after the incident) as follows; "We thank all those involved in this incident for their quick and decisive actions in defense of tolerance and religious diversity." Respondent also took steps to ensure that this incident did not affect the matter before him that the woman had come to observe and gave both sides in that case the opportunity to select another judge. Neither side objected to his continued involvement. Respondent has cooperated with the Commission's investigation. He acknowledges that the act occurred, it was inappropriate and violated the Code of Judicial Conduct. Respondent has been a judicial officer for three years and has had no prior disciplinary actions against him. Since this incident became public, Respondent has recognized the need to change his policy and in that regard cooperated with the other judges of Tacoma Municipal Court to institute a new courtroom attire policy. He has modified his conduct and no longer imposes the restriction in question.

3. Based upon the stipulated facts, upon consideration and balancing of the above factors, Respondent and the Commission agree that Respondent's stipulated misconduct shall be sanctioned by the imposition of an admonishment. An "admonishment" is a written action of the Commission of an advisory nature that cautions a respondent not to engage in certain proscribed behavior. An admonishment may include a requirement that the respondent follow a specified corrective course of action. Admonishment is the least severe disciplinary action available to the Commission.

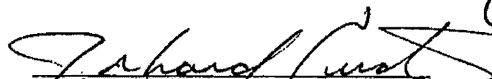
**C. Standard Additional Terms of Commission Stipulation**

1. Respondent further agrees he will not retaliate against any person known or suspected to have cooperated with the Commission, or otherwise associated with this matter.
2. Respondent agrees he will not repeat such conduct in the future.
3. Respondent agrees he will promptly read and familiarize himself with the Code of Judicial Conduct in its entirety.
4. Respondent agrees he will complete a course on cultural competence at his expense approved in advance by the Commission's Chair or his designee and provide proof of completion of the course within one year of the date this stipulation is entered. Upon completion of the course, Respondent shall submit an affidavit affirming that the training undertaken actually addressed the issues discussed in this stipulation.
5. Respondent agrees that by entering into this stipulation and agreement he hereby waives his procedural rights and appeal rights pursuant to the Commission on Judicial Conduct Rules of Procedure and Article IV, Section 31 of the Washington State Constitution in this proceeding.

  
Hon. David B. Ladenburg

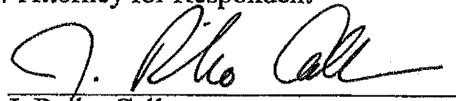
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Date

  
J. Richard Creatura  
Attorney for Respondent

JULY 6, 2006

Date

  
J. Rolko Callner  
Executive Director  
Commission on Judicial Conduct

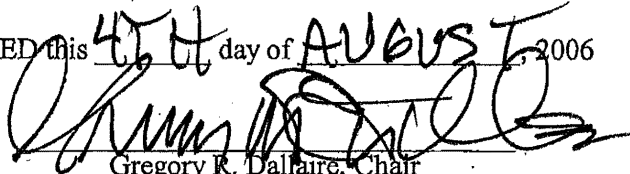
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Date

**ORDER OF ADMONISHMENT**

Based on the above Stipulation and Agreement, the Commission on Judicial Conduct hereby orders Respondent, Judge David B. Ladenburg, 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. Dallaire, Chair  
Commission on Judicial Conduct