

Date 6/8/07

Rec'd. By: je

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In the Matter of:

The Honorable Timothy B. Odell,
Judge of the Everett Municipal Court

CJC No. 4906-F-132

**STIPULATION, AGREEMENT
AND ORDER OF REPRIMAND**

The Commission on Judicial Conduct and the Honorable Timothy B. Odell, Judge of the Everett 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.

I. STIPULATED FACTS

A. Judge Timothy B. Odell (Respondent) is now, and was at all times referred to in this document, a judge of the Everett Municipal Court in Snohomish County. Respondent served as part-time judge for that court from 1987 to 2001 and has served as a full-time judge in that court since 2001.

B. In December 2005, the Commission on Judicial Conduct received a complaint concerning Respondent's pre-trial practices. The Commission conducted an independent investigation and, in October 2006, commenced initial proceedings by contacting Respondent and serving him with a Statement of Allegations. After reviewing the Statement of Allegations and the information supporting the allegations therein, Respondent and the Commission agree to the following.

C. Prior to being contacted by the Commission, Respondent failed to properly advise criminal defendants of their constitutional and procedural rights at arraignment

1 and probation review hearings; failed to properly accept guilty pleas in accordance
2 with court rules; and engaged in a practice that appeared to coerce criminal
3 defendants to waive their right to a jury trial.

4 1. Until being contacted by the Commission in October 2006,
5 Respondent's standard arraignment practice was to provide each defendant
6 appearing for arraignment a written form entitled "Statement of Defendant's Rights at
7 Arraignment." This form identified a criminal defendant's fundamental rights. When
8 Respondent called an individual defendant's case, that defendant provided the signed
9 form to the clerk. Without inquiry as to whether the defendant read and understood
10 the form or wished to waive their right to counsel, Respondent would note the crime
11 charged and ask the defendant how they wished to plead.

12 2. Respondent instructed those defendants that pleaded guilty to get
13 "some paperwork" - a guilty plea form - from the prosecuting attorney, fill it out and
14 wait until the end of the calender. At that time, Respondent would re-call the
15 defendant's case, confirm that it was still the defendant's intention to plead guilty, and,
16 if so, find him or her guilty and impose sentence.

17 3. In probation review hearings, until being contacted by the Commission,
18 Respondent routinely failed to advise defendants of their right to be represented by
19 counsel during the probation review proceeding, as well as their right to contest at a
20 review hearing any allegation of noncompliance.

21 4. Prior to being contacted by the Commission, Respondent consistently
22 required any criminal defendant who had two pre-trial bench warrants to choose
23 between being taken into custody with bail being set, or waiving their right to jury trial
24 and not being required to post bail. Respondent's self-described "policy" was based
25 on his rationale that if the defendant wished to have a bench trial, there would be no
26 need for bail, as the judge was required to be in court regularly anyway, and the
27 defendant's absence from a bench trial would not result in wasted jury fees.

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2 **II. AGREEMENT**

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

4 1. Based upon the foregoing stipulated facts, Respondent agrees he
5 violated Canons 1, 2(A) and 3(A)(1) the Washington State Code of Judicial Conduct.

6 Canons 1 and 2(A) of the Code require judges to uphold the integrity of the judiciary
7 by avoiding impropriety and the appearance of impropriety and by acting at all times
8 in a manner that promotes public confidence in the integrity and impartiality of the
9 judiciary. Canon 3(A)(1) of the Code requires judges to be faithful to the law and
10 maintain professional competence in it.

11 2. Respondent agrees he violated the above canons by engaging in a
12 pattern and practice of failing to properly advise criminal defendants of their
13 constitutional rights at arraignment and probation review hearings; failing to conduct
14 guilty pleas in accordance with the rules of court and settled case law and engaging
15 in a practice that appeared to coerce jury trial waivers.

16 3. Respondent's advisement of rights practices were deficient.

17 Respondent made no individual inquiry or verbal advisement of rights at all prior
18 to asking each defendant to enter a plea. CrRLJ 4.1(a)(3) requires that, when a
19 defendant appears without a lawyer, "the court shall advise the defendant on the
20 record" of the right to jury trial and the right to counsel at arraignment and the right to
21 have counsel appointed for arraignment if the defendant cannot afford one. Although
22 defendants appearing before Respondent for arraignment were provided written
23 information explaining their constitutional rights, this method of advisement, by itself,
24 was deficient. At a minimum, Respondent was obligated to inquire whether the
25 defendants had read and understood the written court information. See In re
26 Hammermaster, 139 Wn.2d 211, 236 (1999).

27 In probation review hearings, criminal defendants have the right to be
28 represented by counsel, see CrRLJ 7.6(b), as well as the right to contest at the hearing
any allegation of noncompliance. Respondent did not properly advise defendants of

1 these rights, nor determine whether each defendant wished to waive their right to
2 counsel before holding a revocation proceeding.

3 4. Respondent's change of plea practices were deficient.

4 Respondent did not make inquiry to determine, nor make a finding on the
5 record, that each guilty plea was knowingly, voluntarily and intelligently made and did
6 not find, on the record, facts sufficient to support the plea, despite the requirements
7 in CrRLJ 4.2(d).¹ Furthermore, Respondent did not inquire whether the defendant
8 wished to make a statement and to present information to the court prior to imposing
9 sentence, as required by CrRLJ 7.2(c).

10 Judges have a basic responsibility to ensure that criminal defendants are
11 properly advised of their constitutional and due process rights so that they are able to
12 make informed decisions regarding their case. This basic duty is dictated by the
13 constitutional requirement that waiver of fundamental rights, such as the right to
14 counsel or to a jury trial, and/or the decision to enter a guilty plea may be legally
15 recognized only if done knowingly, intelligently and voluntarily. In addition, judges
16 have a duty to ensure that guilty pleas are constitutionally valid – that they are made
17 voluntarily, competently and with an understanding of the nature of the charge and he
18 consequences of the plea. The judicial procedures designed to safeguard a criminal
19 defendant's fundamental rights, and the corresponding validity of a guilty plea, are
20 clearly set forth in the court rules, statutes and case law and highlighted by this
21 Commission's prior decisions. In addition, the Criminal Benchbook for Courts of
22 Limited Jurisdiction provides guidance on how to implement the law and observe these
23 rights.

24 5. Respondent's two bench warrant "policy" was coercive.

25 Respondent required criminal defendants who had two pre-trial bench warrants
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27 ¹ CrRLJ 4.2(d) Voluntariness. The court shall not accept a plea of guilty without first
28 determining that it is made voluntarily, competently, and with an understanding of the nature
of the charge and the consequences of the plea. The court shall not enter a judgment upon
a plea of guilty unless it is satisfied that there is a factual basis for the plea.

1 to choose between being taken into custody with bail being set or waiving their right
2 to jury trial. While it is proper for a judge to impose bail based on a defendant's failure
3 to appear in court, Respondent's practice set up a choice that may have coerced
4 waivers of the right to jury trial.

5 **B. Imposition of Sanction**

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

10 2. In determining the appropriate level of discipline to impose, the
11 Commission must consider the following non-exclusive factors set out in Rule 6(c) of
12 its Rules of Procedure.

13 a. **Characteristics of Misconduct.**

14 (1) **Whether the misconduct is an isolated instance or evidence
15 of a pattern of conduct**

16 The violations described above were not isolated, but rather constituted
17 a regular practice that Respondent had followed for years.

18 (2) **The nature, extent and frequency of occurrence of the acts
19 of misconduct.**

20 The acts of misconduct were systemic and routine. The court in
21 Hammermaster held that denying a defendant basic due process in taking pleas is a
22 serious violation of Canon 3(A)(1). Four years later, the court in In re Michels, 150
23 Wn. 2d 159, 172 (2003), reiterated: "The protection of due process rights for criminal
24 defendants requires strict compliance with the Canons of Judicial Conduct. Repeated
25 violations are serious and warrant sanctions." The Commission recently articulated
26 that the seriousness of deficient due process advisement practices "cannot be
27 overstated." In re Ottinger, CJC No. 4475-F-119 (Commission Decision May 5, 2006).

28 (3) **Whether the misconduct occurred in or out of the courtroom.**

In every case, the misconduct occurred in the courtroom.

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(4) **Whether the misconduct occurred in the judge's official capacity or in the judge's private life.**

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

(5) **Whether the judge flagrantly and intentionally violated the oath of office.**

There is no evidence Respondent flagrantly or intentionally violated the oath of office.

(6) **The nature and extent to which the acts of misconduct have been injurious to other persons.**

The nature of injury from Respondent's misconduct concerns the deprivation of an accused person's fundamental due process rights as well as guilty pleas and probation violations that are constitutionally infirm. It is impossible to determine the extent of any injury to any particular individual, or if any injury actually took place. While there is no indication that Respondent actively denied access to counsel, failure to make the proper advisements may well have led multiple defendants to proceed alone, foregoing defenses or presentation of mitigating factors.

(7) **The extent to which the judge exploited the judge's official capacity to satisfy personal desires.**

There is no evidence Respondent exploited his position for personal desires.

(8) **The effect the misconduct has upon the integrity of and respect for the judiciary.**

The effect of this misconduct was to potentially deprive defendants of their constitutional rights. The inadequate dialogue between the court and defendants created the impression of a mechanical process that may have undercut the public's respect for the judiciary.

b. Service and Demeanor of the Judge

(1) **Whether the judge has acknowledged or recognized that the acts occurred.**

As soon as the Commission brought this matter to Respondent's

1 attention, he openly acknowledged the acts occurred and recognized the impropriety
2 of his advisement practices.

3 (2) **Whether the judge has evidenced an effort to change or**
4 **modify the conduct.**

5 Prior to contact from the Commission, Respondent recognized
6 deficiencies in some of practices and took steps to correct them. For example, in
7 February of 2006, Respondent began requiring written guilty plea forms. Respondent
8 promptly corrected the deficiencies noted herein as soon as the Commission brought
9 this matter to his attention. He affirms that he promptly reviewed the relevant case law
10 and rules of court, and continues to consult the Criminal Benchbook, to ensure that his
11 arraignment, change of plea, and probation review procedures conform to the law.
12 Respondent no longer employs the two-bench-warrant policy that forced defendants
13 to choose between jail and a jury trial. The Commission's continuing investigation
14 confirms Respondent has remedied the concerns giving rise to this disciplinary action.

15 (3) **The judge's length of service in a judicial capacity.**

16 Respondent has served his community as a part-time and then full-time
17 judge for 20 years.

18 (4) **Whether there has been prior disciplinary action concerning**
19 **the judge.**

20 There have been no prior disciplinary action concerning Respondent.

21 (5) **Whether the judge cooperated with the Commission**
22 **investigation and proceeding.**

23 Respondent has fully cooperated with the Commission in this matter. His
24 response to this disciplinary proceeding has been exemplary, both in the manner in
25 which he has comported himself before the Commission and in his sincerity to correct
26 the problems identified by the Commission. His prompt recognition and compliance
27 upon notice from the Commission contrasts favorably with the experiences in the prior
28 Commission cases cited above involving pattern due process violations.

3. Based upon the stipulated facts, upon consideration and balancing of the

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

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

13 5. Respondent agrees he will promptly read and familiarize himself with the
14 Code of Judicial Conduct, the Criminal Rules for Courts of Limited Jurisdiction and the
15 Criminal Procedure Benchbook for Courts of Limited Jurisdiction in their entirety.

16 6. Respondent agrees he will complete a course on judicial ethics with an
17 emphasis on criminal procedure at his expense, approved in advance by the
18 Commission chair or the chair's designee, and provide proof of completion of the
19 course within one year of the date this stipulation is entered.

20 Standard Additional Terms and Conditions

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

25 8. Respondent affirms he has consulted with or has had an opportunity to
26 consult with counsel prior to entering into this stipulation.

27 9. Respondent further agrees that he will not retaliate against any person
28 known or suspected to have cooperated with the Commission, or otherwise associated

