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SEP 26 2007

COMMISSION ON JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In re the matter of

NO. CJC No. 5299-F

THE HONORABLE MARK C. CHOW
Judge, King County District Court,

ANSWER TO STATEMENT OF
CHARGES

- I. Conduct Alleged to have occurred on January 23, 2007 during the Jail Calendar (not in Mental Health Court).

Judge Chow has always been forthright with regard to this charge. Judge Chow admits that he self-reported, through counsel, to the Commission on Judicial Conduct "CJC." Judge Chow further admits that he agreed resolution was sought with the CJC. On the date in question Judge Chow had just finished sentencing a defendant for theft who had a criminal history of over thirty (30) convictions for theft and over ten (10) assault charges to jail time. The Judge concedes that the response to the defendant was inappropriate. Judge Chow stopped the interaction immediately realizing the inappropriateness of his response. Judge Chow had the defendant exit the Jail Courtroom, did not sanction the defendant further after the outburst, and shortly thereafter apologized to those in the Courtroom. The next day, still feeling remorse over his previous response, he again apologized to the staff. Judge Chow's response was

ANSWER TO STATEMENT OF CHARGES - 1

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1 not racial nor was punitive to the defendant. It was an unfortunate response, stopped
2 as soon as possible, apologies were extended and Judge Chow subsequently self-
3 reported to the Commission.

4 II. Conduct Alleged to have occurred in Mental Health Court.

5 Let the record reflect that the second allegation did not take place on the same
6 day as the First allegation. The incident occurred within a week or weeks after
the first allegation.

7 Our Criminal Justice System has existed as long as our country has. In the last
8 15 years the Administration of Justice and the Courts have been addressing the
9 revolving door of incarceration, recidivism of crime and the injustice of criminalizing the
10 mentally ill. Approximately 15 years ago the first Therapeutic /Drug Court was
11 established in the United States. Approximately 9 years ago the first Therapeutic
12 /Mental Health Court (MHC) was established in the United States. The second oldest
13 MHC is the King County District Court which Judge Chow had presided for 6 of those
14 years. Today, there are over 1,700 Drug Courts and over 120 MHC's throughout our
15 country. Therapeutic/Problem-Solving/Specialty Courts can today be considered
16 institutionalized within the Administration of the Court Systems.

17 **"The traditional adversarial system of justice, designed to resolve legal**
18 **disputes, is ineffective at addressing AOD abuse."** (Exhibit A, Defining Drug Courts:
19 THE KEY COMPONENTS). Therapeutic Courts and Therapeutic Jurisprudence are not
20 just pilot programs. All three branches of our government have directly and monetarily
21 endorsed the establishment and continual operation of such Courts.

22 The Conference of State Chief Justices in 2000 by resolution ratified the
23 following:

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**IN SUPPORT OF PROBLEM-SOLVING COURT
PRINCIPLES AND METHODS**

These principals and methods have demonstrated great success in addressing certain complex social problems, such as recidivism, that are not effectively addressed by the traditional legal process

(Emphasis added, see Exhibit B)

In 2006 our State Legislature passed, and the Governor signed into law legislation which authorized a funding mechanism specifically for the purposes of establishing, maintaining and operating Therapeutic Courts "MHC's". Skagit, Spokane, Thurston, and Benton counties have already commenced creation of MHC's within their jurisdictions. Therapeutic Courts will soon be fully established statewide.

Drug Courts have been recognized as successful Courts practicing Therapeutic Jurisprudence in reducing AOD (Alcohol and Other Drugs) in that population involved with the Criminal Justice System. Mental Health Courts are also achieving like success using similar base concepts. Differing from Drug Courts, Mental Health Courts involve perhaps more complex issues when attempting to be therapeutically effective. Both Therapeutic Courts' clinical approach is one of MINIMIZED CONFRONTATION with the understanding that total abstinence of AOD will likely not be quickly achieved. There is a higher incidence of co-occurring problems in MHC. Under both scenarios of the therapeutic Court, the judicial role is purposefully different than the traditional court judicial role.

1 **A. JUDICIAL ROLE IS PURPOSEFULLY DIFFERENT THAN IN A TRADITIONAL**
2 **COURT ROLE.**

3 Drug Courts have existed for a greater length of time than MHC's and have
4 established tenants and guidelines to assist the Judge. Unfortunately, the MHC has not
5 yet fully developed their own therapeutic guidelines. Basic concepts and goals are very
6 similar although different in various aspects due to the clinical modality employed by
7 respective clinical sciences. A National Association of Mental Health Court
8 Professionals has yet to be formed. The necessity of further refinement still exists.
9 However, judicial involvement, different from the "traditional" role, is universally
10 accepted in BOTH courts as a necessary component for successful outcomes. It is this
11 Therapeutic Jurisprudence role, the therapeutic environment sought, and
12 PURPOSEFUL ENGAGEMENT with the defendant, different from "Traditional Courts,"
13 that has caused this inevitable collision with the Commission. The public charges by
14 the Commission against Judge Chow for actions in a Therapeutic Court are probably
15 the first time in the United States MHC practices have been addressed in a disciplinary
16 proceeding.

17 A primer issued by the U. S. Department of Justice, Office of Justice Programs
18 and in collaboration with the National Association of Drug Court Professionals (1997)
19 entitled DEFINING DRUG COURTS: THE KEY COMPONENTS has been utilized by
20 Therapeutic Courts since its publication. The Key Component #7 is:

21 **ONGOING JUDICIAL INTERACTION WITH EACH**
22 **DRUG COURT PARTICIPANT IS ESSENTIAL.**

23 This Key Component purpose goes on to state:

 This active, supervising relationship, maintained throughout
 treatment,

1 **INCREASES** the likelihood that a participant will remain in treatment and
2 improves the chances for sobriety and law-abiding behavior. Ongoing
3 Judicial supervision also **COMMUNICATES** to participants – **OFTEN FOR**
4 **THE FIRST TIME-** that someone of authority cares about them and is
5 closely watching what they do. (Emphasis added)

6 **DRUG COURTS REQUIRE JUDGES TO STEP BEYOND THEIR**
7 **TRADITIONALLY INDEPENDENT AND OBJECTIVE ARBITER**
8 **ROLES AND DEVELOP NEW EXPERTISE.** (Emphasis added)

9 Also, under Key Component #2, sub 4 of Performance Benchmarks, the Defense
10 Counsel is advised to:

11 ...informs the participant that he or she will be expected to speak
12 Directly to the judge, not through an attorney.
13 (Exhibit "C")

14 **B. JUDGE CHOW'S MENTAL HEALTH THERAPEUTIC JURISPRUDENCE**
15 **EDUCATION AND TRAINING**

16 Aside from the practical experience of presiding over King County Mental Health Court
17 for six of the nine years existing, Judge Chow has attended many educational tracks
18 over the years. Those tracks are outlined in Exhibit "I" attached hereto.

19 [Exhibit A: Key Component #9: "Education and training programs also help maintain a
20 high level of professionalism..."]

21 Even though other MHC staff may not have had the opportunity/nor experience
22 of continual education in the field, Judge Chow has availed himself to a wide range of
23 education, training and literature during his tenure. There have been various personnel
changes over the past two years. Key Component #9 states "All drug (mental health)
court staff should be involved in education and training, even before the first case is
heard."

1 After the first year of operation of the King County Mental Health Court Judge
2 Chow presided the following six years. The following successful "outcomes" of its
3 graduates for the years he presided are as follows:

- 4 • 75.9% DECREASE IN RECIDIVISM
- 5 • 90.8% REDUCTION IN DAYS SPENT IN JAIL
- 6 • 87.9% DECREASE IN PERCENTAGE OF VIOLENT OFFENSES
- 7 • 90% FELT THEIR LIFE WAS BETTER AFTER INVOLVEMENT
8 WITH MENTAL HEALTH COURT
- 9 • 92% WOULD OPT-IN TO THE COURT AGAIN
- 10 • 92% MAINTAINED CONTACT OR RECONNECTED WITH
11 THEIR FAMILY MEMBERS
- 12 • NOT ONE FORMAL COMPLAINT MADE

(Exhibit D)

13 One former defendant/consumer commented:

14 "They didn't treat me as a criminal, it was a sympathetic process where
15 people were more concerned about me getting better than punishing
16 by crime."

(Exhibit E)

17 In an article of The New York Times, entitled "Judges Turn Therapist in Problem-Solving
18 Court" appearing April 26, 2005 (Exhibit F) speaks about the Judge in their Mental
19 Health Court. In regard to the Judge's role with the defendant it states as follows:

20
21 The relationships are almost intimate. The judge may note a change
22 in a defendant's appearance or comment on a particularly fetching
23 piece of clothing, and often talks to the defendant directly instead of
through a lawyer.

The article goes on to use one example of what the Judge did:

1 He did, however, give the man his personal cell phone number and told
2 him to call if he was in a jam again. The man says he used it only once,
3 to ask the judge's advice about a girl to whom he was considering
proposing.

4 Judge Chow does not necessarily endorse nor does he necessarily condone the
5 actions of the New York Judge. Judge Chow would never give his personal cell phone
6 number to a defendant/consumer. Judge Chow only offers the article as an example
7 confirming that Therapeutic Jurisprudence is practiced across the country and
8 PURPOSEFUL ENGAGEMENT with the defendant is common place in Mental Health
9 Courts.

10 The use of Purposeful Engagement is also a methodology that is clinically
11 accepted in the Mental Health field. An individual rapport with the client/consumer
12 should be established for successful compliance outcomes. Purposeful Engagement by
13 the Judge reduces the defendant/consumer's anxiety and therapeutically creates a non-
14 adversarial court environment. IT WAS IN THIS CONTEXT that Judge Chow was using
15 such engagement with the defendant/consumer in the case at bar.

16 17 C. RELEVANCE OF ETHNICITY IN MENTAL HEALTH COURT

18 Portions of Exhibit A, Defining Drug Courts: The Key Components, state the
19 following relevant directives:

20 Judges and court personnel typically need to learn about the nature
21 of AOD problems and the theories and practices supporting
22 **SPECIFIC** treatment approaches.

(Key Component #9 emphasis added)

23 In addition, treatment services must be relevant to the **ETHNICITY**,
gender, age, and other characteristics of the participants.

(Key Component #4 emphasis added)

The origins and patterns of AOD problems are complex and **UNIQUE** to each individual.

(Key Component # 4 emphasis added)

They are influenced by a variety of accumulated social and **CULTURE** experiences.

(Key Component #4 emphasis added)

A drug court judge is knowledgeable about treatment methods **AND** **THIER LIMITATIONS.**

(Key Component #7 emphasis added)

The model primer used by Drug Courts does not take into account more complexities when mental health issues are to be taken into consideration. It is estimated that 70% of MHC defendant/consumers have both AOD and Mental Health issues co-occurring. Substance abusing by self-medicating Axis I defendant/consumers only exasperates the service systems availability or lack thereof. There are methods and limitations the AOD and Mental Health systems have if **CULTURE COMPETENCY** issues are not taken into consideration. It is the Therapeutic Court's vigilance and continual learning about other systemic problems which will improve the criminal justice system from itself being systemically bias which may continue that which it seeks to reduce.

The results of under informed (Traditional) courts regarding defendant/consumer's actions or inaction may not be a result of intentional non-compliance. In Traditional Courts, non-compliance by defendant/consumer's results

1 typically with sanctions such as jail. It is a given within the Mental Health field that
2 incarceration is not a conducive environment to resolve Mental Health issues. It is said
3 that the jail environment in certain instances exacerbates an Axis I psychosis. In short,
4 Traditional courts are not necessarily equipped to address the complex problem-solving
5 necessary. By not addressing the underlying problem that may be the cause of the
6 defendant/consumer's actions, recidivism and the revolving door in jail will continue.
7 Unlike the traditional judicial approach, the therapeutic court looks to address the
8 individual defendant/consumer's unique difficulties, attempt to tailor the most
9 appropriate treatment and break the cycle of returning to the criminal justice system.
10 Also, with relation to other systems, AOD, Mental Health, Housing and Employment, the
11 Therapeutic Court does not simply say "The leak is on your end of the boat".

12 There are systemic problems in the Mental Health System about which the
13 Therapeutic Court should be aware. Ethnicity does affect the treatment methods and
14 limitations within that system. For a Therapeutic Court to not recognize this, the
15 possible incorrect basis of assumption could be perpetuated in the criminal justice
16 system that could result in unfair loss of liberty.

17
18 People of Color, depending upon ethnicity, may effect appropriate and relevant
19 treatment for that individual. Hispanic and African Americans will not be discussed for
20 purposes of this response to the Commission. Studies and Cultural Competency issues
21 related to those racial groups in the Mental Health field are not addressed but do indeed
22 exist.

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Yet many racial and ethnic group members find the organized Mental health system to be uniformed about cultural context and, thus, unresponsive and/or irrelevant.

... It is important to acknowledge and appreciate that there exist wide variations WITHIN and among racial and ethnic minority groups with respect to use of mental health services...
(emphasis added)

... In the interim, CULTURALLY COMPETENT services —that is, services that INCORPORATE understanding of racial and ethnic groups, their histories, traditions, beliefs, and value systems— are needed to enhance the APPROPRIATE USE of services and effectiveness of treatments for ALL ethnic and racial consumers.
(emphasis added)

Attached hereto as Exhibit "H" are various excerpts from studies and realities in the mental health field that are ASIAN AMERICAN SPECIFIC and exemplify why ETHNICITY does play an important role. Culture Competency in relation to other defendants/consumers of color is equally ethnic specific. Should the Commission request further examples regarding African Americans, Hispanic or the like, they can be

1 provided upon request. The examples aforementioned in regard to Asians and their
2 sub-groups are just a few within the mental health field. Awareness of ethnicity does
3 play an important role in determining whether a defendant/consumer may or may not be
4 intentionally complying with treatment requirements. The Mental Health field itself is not
5 an exact science. There is no "magic pill" that will work for everyone. Studies have
6 shown that "Ethnicity" may effect treatment compliance and/or effect appropriate
7 therapeutically effective dosage. For the Therapeutic Court to punish or sanction a
8 defendant/consumer for non-compliance and not take into account possible cultural
9 and/or genetic reasons for said non-compliance would be unjust.

10 In MHC the Judge's role is a continual balance of traditional judicial actions and
11 therapeutic jurisprudence. The lines for the MHC Judge and other Therapeutic Court
12 judges do not have bright lines in the course of seeking successful outcomes. The
13 balance and blend between Criminal Justice philosophy and Therapeutic purpose are
14 continual and is case by case being weighed. The "punishment grid" used in Drug
15 Court, for instance, has been found time and time again by MHCs' across the nation to
16 not have practical and /or appropriate application in MHC. The AOD and Mental Health
17 clinical modality are different. As the mental health field understands and strives to
18 tailor and individualize treatment for the consumer, so does the Mental Health Court.
19 Ethnicity matters.

1 **E) THE USE OF THE TERM "FLAVOR"**

2 Judge Chow used the term when addressing persons of color and in particular to
3 a defendant/consumer of what appeared to be of Asian decent. Judge Chow's intent
4 was specific to the defendant/consumer before him in Mental Health Court. He would
5 never nor has ever in a "traditional court" asked a defendant the same thing nor inquire
6 about the defendant's ethnicity.

7 Judge Chow understands and believes the term has no historical ethnic and/or
8 racial demeaning history. There is nothing to lead one to believe that the use of the term
9 is a "per se" violation. The next analysis would be the context in which it was
10 expressed. What was the intent of the speaker. To do otherwise would be "taking it out
11 of context". He believed it was a less offensive and neutral term to use in beginning a
12 rapport with a defendant/consumer that appeared to be of mixed Asian ethnicity as well
13 as to gain some ethnicity information. Judge Chow happens to be of Asian decent as
14 well as the Consumer/defendant who happened to be of Asian decent. Judge Chow
15 believed there was **MUTUALITY OF CULTURE** between the Asian
16 defendant/consumer which was confirmed immediately by the Asian
17 defendant/consumer answering quickly that she was half Japanese. The dialogue that
18 followed was light hearted mutuality of culture communication that was not taken as
19 demeaning by the consumer/defendant nor by anyone else that the court was aware of.
20 It was in the context of mutuality of culture that the interaction took place and was
21 between and directed within the consumer/defendant and Judge.

22 IF one is not familiar with the concepts of "mutuality of culture" nor having any
23 effective diversity training, and IF the words that took place between two Asian people

1 (Judge Chow and the consumer/defendant) are simply standing alone and IF the words
2 are taken out of the context of mutuality of culture and IF one does not understand that
3 the words spoken was only due to being in Mental Health Court then the words spoken,
4 standing alone and not noted in what context, could draw different meaning.

5 An example, Judge Chow was born and raised in the south end of Seattle,
6 attended public schools including Franklin High School and has even been a volunteer
7 sports coach in recent years at Franklin High School. If in Mental Health Court there
8 appeared a young African American consumer/defendant that was not following his
9 medication regimen and it appeared appropriate at the time to Judge Chow, he might
10 even say something like the following: "Hey dog, you have to take your meds or you
11 could end back up in that cycle of jail again." To another, not understanding the
12 context, nor understanding the concept of mutuality of culture, and the word just
13 standing alone out of context, might consider the Court calling him "dog" as demeaning.
14 In reality, the use of the term would communicate to the consumer/defendant that there
15 exists a Mutuality of Culture between them. A mutuality of culture conversation would
16 reduce anxiety levels and could open up a greater communication rapport between the
17 two individuals. The term "dog" if culturally and appropriately communicated actually is a
18 "term of endearment".

19 The engagement in the case at bar was purposeful by Judge Chow because of
20 (1). the setting in Mental Health Court, (2). the Defendant/consumer being of Asian
21 decent, (3). to put the Asian defendant/consumer at greater ease because of mutuality
22 of culture, (4). to obtain information regarding ethnicity that may play a role in
23 appropriate treatment.

1 Consumer/defendants in Mental Health Court require holistic analysis on what
2 may be the appropriate sentence and enforcement therein. The continuum of care that
3 may be required for successful outcomes can include issues concerning housing,
4 treatment, access to medication, therapeutic accountability, Jurisprudence
5 accountability, and employment, to name a few. These "care" issues vary, sometimes
6 widely, from one consumer/defendant to another. Compound those issues and add
7 systemic culture competency concerns, than one can begin to see the complexities and
8 "new expertise" that Therapeutic Judges must achieve to have an effective Mental
9 Health Court.

10 This is not to say that "Traditional" safeguards both legal and ethically should not
11 be maintained. The fundamental rights of any and all individuals must always be
12 protected. In every Therapeutic Court substantive due process and constitutional rights
13 are not simply thrown to the wayside. Contextual application of Judicial Ethics should
14 be applied to maintain core Ethical purposes.

15 CONCLUSION

16 Therapeutic Courts have existed in our criminal justice system for the last 15
17 years and appears that it will continue to do so. Traditional Courts in those areas have
18 not been as successful in reducing recidivism and incarceration. Therapeutic Court
19 Judges are practicing the "Ten Key Components" across the nation. In the Ethics
20 portion that Judge Chow attended states as follows:

21 It has been suggested that ethical codes be changed because they do not
22 acknowledge drug courts or the therapeutic model **AS THEY STAND**.
23 This suggestion indicates that current models are not aligned with
ethical rules. (emphasis added)

1 It is therefore conceded by Judge Chow that the Washington State Judicial
2 Ethics "as it stands" does not allow for Courts to inquire about "Ethnicity" without being
3 in violation. Judge Chow did in fact ask about "Ethnicity" of a consumer/defendant in
4 Mental Health Court in violation of the present Judicial Ethics Canons prohibiting the
5 same.

6 Judge Chow is no longer in Mental Health Court and would therefore not be
7 inquiring anyone of their "Ethnicity".

8 Judge Chow would encourage the Judicial Commission to pursue a task force to
9 revise the Canons, as has California, to recognize the existence of Therapeutic Courts
10 and the difference from Traditional Courts. Therapeutic Court Judges are all trying to
11 practice sound therapeutic jurisprudence for successful outcomes. Piecemeal or
12 selective enforcement of ethics violations from strictly a traditional standpoint will only
13 chill proven effective jurisprudence in all therapeutic courts.

14 DATED this 25th day of September, 2007.

15 /s/ Mark C. Chow

16 Mark C. Chow

17 STAFFORD FREY COOPER

18 By: /s/ Anne M. Bremner

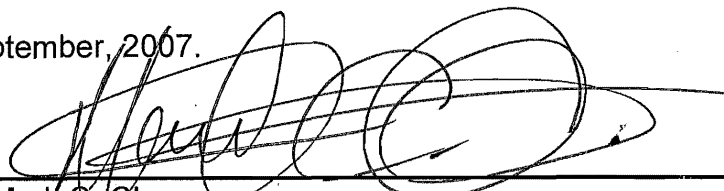
19 Anne M. Bremner, WSBA #13269

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14 DATED this 25th day of September, 2007.

15 
16 Mark C. Chow

17 STAFFORD FREY COOPER

18 By: 
19 Anne M. Bremner, WSBA #13269

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