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COMMISSION ON JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In Re the Matter of: The Honorable Katherine M. Stolz, Judge of the Pierce County Superior Court)))))	CJC No. 5456-F-138 STIPULATION, AGREEMENT AND ORDER OF ADMONISHMENT
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The Commission on Judicial Conduct and Katherine M. Stolz, Judge of the Pierce 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 Katherine M. Stolz (Respondent) is now, and was at all times referred to in this document, a judge of the Pierce County Superior Court. Respondent has served in that capacity since January, 2001.

2. In August of 2007, the Commission on Judicial Conduct (Commission) received a complaint alleging Respondent required a man who was appearing in court as a defendant in a criminal matter to remove his head wear (kufi) even though he indicated to Respondent that he wore it for religious reasons. After an independent investigation, the Commission commenced initial proceedings on January 3, 2008, by contacting Respondent and serving her with a Statement of Allegations alleging that, on July 25, 2007, Respondent required a man before her in court to remove a head covering that he told her he wore for religious reasons.

3. Respondent answered the Statement of Allegations on January 22, 2008. Respondent admitted the facts underlying the allegation. She explained that she was presiding over an extremely heavy calendar and felt she lacked the time to make a detailed inquiry. Respondent recalled that the individual had appeared before her on prior occasions without any

1 head covering. In addition, Respondent believed that the head covering in question appeared
2 to resemble the type of close fitting head gear known as a “do- rag” and was not similar to the
3 head coverings other Muslim men had worn in her courtroom. Respondent concluded, without
4 further inquiry, that the head covering was a casual garment, not something “religious in
5 nature.” She stated that, at the time, she thought she would follow up with the local mosque
6 to find out if such a head covering was required for men of the Muslim faith, but because of
7 the time-consuming duties of being criminal presiding judge, Respondent did not do so.

8 4. Respondent now acknowledges her actions were contrary to settled law in
9 regard to proper courtroom attire. See, e.g., *In Re Ladenburg*, CJC No. 4939-F-130 (2006).
10 Respondent further acknowledges she should have engaged in further conversation with the
11 individual rather than simply disbelieve him.

12 II. AGREEMENT

13 A. Respondent’s Conduct Violated the Code of Judicial Conduct.

14 1. Based upon the foregoing stipulated facts, Respondent and the Commission
15 agree that Respondent violated Canons 1, 2(A) and 3(A)(1) by requiring a man wearing a head
16 covering he maintained was for religious purposes to remove it in court without any inquiry
17 as to the sincerity of the claimed religious belief.

18 2. Canons 1 and 2(A) require judges to uphold the integrity of the judiciary by
19 avoiding impropriety and the appearance of impropriety and by acting at all times in a manner
20 that promotes public confidence in the integrity and impartiality of the judiciary. Canon
21 3(A)(1) requires that judges be faithful to the law and maintain professional competence in it.

22 3. While judges should take reasonable steps to maintain decorum in their
23 courtroom, they may not abridge rights to religious liberty protected under the First
24 Amendment of the Federal Constitution and Washington State Constitution Art. I, § 11, absent
25 a clear threat to public safety, peace or order. This is not to say that any head covering must
26 be allowed in a courtroom solely because the wearer asserts a religious basis. Judges may
27 inquire into the sincerity of the claimed religious belief, but decisions about what a person’s
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1 faith requires of them is solely up to the person professing the religion. Thus, while
2 Respondent here thought of inquiring with the local Mosque as to whether the kufi worn in her
3 court was required by the Muslim faith, such an inquiry is not determinative, for whether a
4 certain belief or practice is “required” by a religion is not the issue. The only issue is whether
5 the adherent believes that a given practice is part of their sincere faith. See *Malik v. Brown*,
6 *16 F.3d 330, 333 (9th Cir. 1994)* (holding that to implicate the *Free Exercise Clause*, a belief
7 must be both sincerely held and rooted in religious belief). See also *Tyson v. Damore, 2004*
8 *U.S. Dist. LEXIS 16596 (E.D. Pa. Aug. 13, 2004)* (Collecting cases from around the country
9 and finding that “[T]he cases hold that once a court's reasonable needs for security and
10 decorum are met, an individual who holds sincere religious beliefs cannot be precluded from
11 wearing a head covering with religious significance in a courtroom.").

12 **B. Imposition of Sanction.**

13 1. A judge’s honest but mistaken application of the law does not usually result in
14 judicial discipline. In this instance, however, Respondent failed to consider settled law as well
15 as a recent public Commission disciplinary order, *In re Ladenburg*, on this very issue.
16 Respondent’s actions resulted in denying a criminal defendant his right to free exercise of
17 religion in her courtroom. Accordingly, disciplinary action is warranted.

18 2. The sanction imposed by the Commission must be commensurate to the level
19 of Respondent’s culpability, sufficient to restore and maintain the public’s confidence in the
20 integrity of the judiciary, and sufficient to deter similar acts of misconduct in the future. In
21 determining the appropriate level of discipline to impose, the Commission considers the factors
22 set out in Rule 6(c) of its Rules of Procedure.

23 a. Characteristics of the Misconduct.

24 The Commission investigation revealed that, in contrast to *In Re Ladenburg*,
25 Respondent did not have a blanket policy of not allowing religious head coverings in her court,
26 in fact, the evidence suggests that this transgression was an isolated occurrence. Moreover,
27 there is no evidence that Respondent had a pattern or practice which favored one religious
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1 practice over another. The Commission's investigation further showed no indication that
2 Respondent either harbors bias, nor that she reasonably gives the impression that she is biased.

3 Respondent's violation of the Code of Judicial Conduct occurred in the courtroom,
4 while Respondent was acting in her official capacity. There is no indication that Respondent
5 exploited her judicial position to satisfy personal desires. Respondent maintains, and the
6 Commission has no reason to dispute, that the acts complained of in this matter were not
7 intended to give offense or to violate the law.

8 b. Service and Demeanor of Respondent.

9 As soon as the matter was brought to her attention and she reviewed the law,
10 Respondent acknowledged her legal error. Respondent has cooperated with the Commission's
11 investigation. She acknowledges that the act occurred, it was inappropriate and violated the
12 Code of Judicial Conduct. Respondent has been a judicial officer for seven years and has had
13 no prior disciplinary actions against her.

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

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

22 1. Respondent further agrees she will not retaliate against any person known or
23 suspected to have cooperated with the Commission, or otherwise associated with this matter.

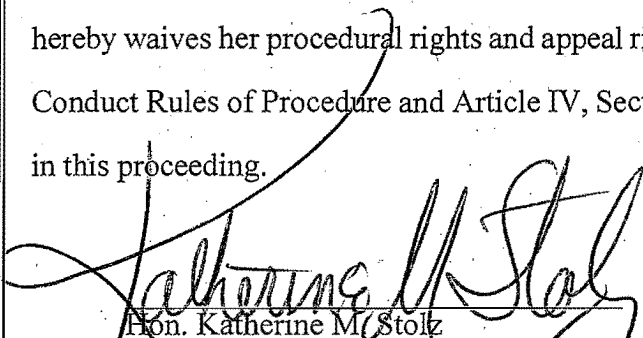
24 2. Respondent agrees she will not repeat such conduct in the future.

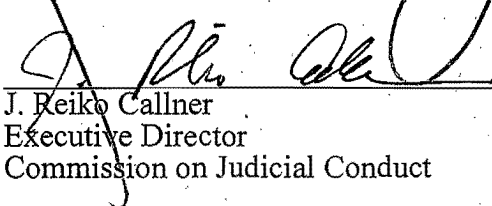
25 3. Respondent agrees she will promptly read and familiarize herself with the Code
26 of Judicial Conduct in its entirety, as well as recent Commission decisions, and certify in
27 writing that she has done so within 60 days of the date this stipulation is entered.

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4. Respondent represents she either consulted or had an opportunity to consult with counsel of her choosing regarding this stipulation and proceeding. Respondent voluntarily enters into this stipulation.

5. Respondent agrees that by entering into this stipulation and agreement she hereby waives her 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. Katherine M. Stolz


J. Reiko Callner
Executive Director
Commission on Judicial Conduct

07/23/08
Date

7/28/08
Date

ORDER OF ADMONISHMENT

Based on the above Stipulation and Agreement, the Commission on Judicial Conduct hereby orders Respondent, Judge Katherine M. Stolz, 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 1 day of August, 2008


Gerald Roach, Chair Pro Tem
Commission on Judicial Conduct