

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In The Matter Of:

The Honorable Michael S. Hurtado,
Seattle Municipal Court Judge

CJC No. 5775-F-141

STIPULATION, AGREEMENT
AND ORDER OF ADMONISHMENT

The Washington State Commission on Judicial Conduct ("Commission") and the Honorable Michael S. Hurtado, Judge of the Seattle Municipal Court ("Respondent"), 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 accepted by the Commission.

I. STIPULATED FACTS

1. Respondent is now, and was at all times referred to in this document, a Seattle Municipal Court Judge. Respondent has served in that capacity since 1993.

2. The Commission initiated disciplinary proceedings against Respondent in this matter on August 14, 2008, by serving Respondent with a Statement of Allegations. The Statement of Allegation alleged that on two occasions – during proceedings on April 14, 2008 and June 18, 2008 – Respondent failed to maintain order and decorum in the courtroom and failed to treat two different attorneys with patience, dignity and courtesy, contrary to the Code of Judicial Conduct. Specifically, it was alleged that in two proceedings, Respondent told different attorneys to "shut up" in a harsh and angry manner.¹

^{1/} In the first instance, during a busy pretrial review calendar, Respondent told an assistant city attorney, "Hey, shut up. Lower your voice. Lower your voice." In the second instance, Respondent interrupted a defense attorney's pretrial motion and yelled at her in front of her client, "Shut up. I'm telling you to shut up."

1 3. Respondent timely answered the Statement of Allegations. In his
2 answer, Respondent acknowledged that he failed to treat the two attorneys with
3 patience, dignity and courtesy, agreeing that his comments and the tone in which he
4 expressed them were inappropriate. Respondent explained that his frustration with
5 the attorneys and other personal stresses in his life contributed to his intemperate
6 conduct. In the first instance, Respondent was frustrated with an assistant city
7 attorney's practice of negotiating cases, which Respondent believed caused
8 unnecessary delay in processing cases set on the court's calendar. In the second
9 instance, Respondent was frustrated by a defense lawyer's persistence in making
10 arguments on the days leading up to a jury trial and with her request that he recuse
11 from the case. Respondent wrote that he regretted allowing his frustration to manifest
12 itself in the inappropriate manner identified herein.

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14 **II. AGREEMENT**

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

16 1. Based upon the foregoing stipulated facts, Respondent and the
17 Commission agree Respondent violated Canons 1, 2(A) and 3(A)(3) of the Code of
18 Judicial Conduct.²

19 2. Canons 1 and 2(A) require judges to uphold the integrity of the judiciary
20 by avoiding impropriety and the appearance of impropriety and by acting at all times
21 in a manner that promotes public confidence in the integrity and impartiality of the
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25 ^{2/} Canon 1 of the Code of Judicial Conduct provides, "Judges shall uphold the integrity and independence
26 of the judiciary." Canon 2 provides, "Judges should avoid impropriety and the appearance of impropriety in all
27 their activities," and Canon 2(A) specifies, "Judges should respect and comply with the law and should act at all
28 times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 3
provides, "Judges shall perform the duties of their office impartially and diligently;" and Canon 3(A)(3) specifies,
"Judges should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom
judges deal in their official capacity, and should require similar conduct of lawyers, and of the staff, court officials
and others subject to their direction and control."

1 judiciary. Discourteous and intolerant behavior by a judge in the judge's official
2 capacity erodes the public's confidence in the impartiality and integrity of the judicial
3 system.

4 3. Canon 3(A)(3) requires judges to be patient, dignified and courteous to
5 all persons with whom judges deal in their official capacity. Respondent has
6 explained that the two instances of intemperate behavior resulted from his frustration
7 with the attorneys and other temporary stressful personal life circumstances, which
8 he has described to the Commission. Canon 3(A)(3) imposes a duty on Respondent
9 as a judicial officer, however, to exercise restraint in the manner in which the judge
10 manifests anger or frustration. Moreover, while judges must control their courtrooms
11 to minimize disruption of court proceedings, they must do so consistently with the
12 requirements of the Code of Judicial Conduct.

13 **B. Imposition of Sanction**

14 1. The sanction imposed by the Commission must be commensurate to
15 the level of Respondent's culpability and must be sufficient to restore and maintain
16 the dignity and honor of the judicial position. The sanction should also seek to protect
17 the public by assuring that Respondent and other judges will refrain from similar acts
18 of misconduct in the future.

19 2. In entering this stipulation, the Commission has carefully considered the
20 factors set out in CJCRP 6(c).

21 A. Characteristics of Respondent's Misconduct. The misconduct
22 described herein occurred in Respondent's official capacity and in the courtroom.
23 Respect for the judiciary is eroded by intemperate behavior by a judge in open court.
24 In mitigation, while Respondent has stipulated to more than one incident giving rise
25 to this stipulation and agreement, there is no evidence of a regular pattern of similar
26 behavior. The Commission's independent investigation has shown Respondent
27 generally maintains an appropriate and professional demeanor. The behavior
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1 described herein was spontaneous and reactive, not deliberate, and the extent of
2 each incident was confined to a particular situation before the court. Respondent did
3 not intentionally or flagrantly transgress his oath of office, and he did not exploit his
4 office for personal gain.

5 B. Service and Demeanor of Respondent. Respondent has fully
6 cooperated with the Commission's investigation. He acknowledged his actions were
7 inappropriate and has expressed remorse for them. Respondent apologized to the
8 attorneys shortly after each incident. Moreover, prior to being contacted by the
9 Commission, Respondent began seeing a therapist to help him deal with the
10 considerable personal stress he described experiencing at or near the time of these
11 incidents. In addition, prior to reaching this agreement, Respondent attended a two-
12 day class on judicial wellness and stress management offered through the National
13 Judicial College in an attempt to gain additional knowledge to assist him in the future.
14 These actions are accepted as an indication that Respondent takes these matters
15 seriously and has already taken steps to ensure that such behavior will not be
16 repeated. Respondent has been a judicial officer for fifteen years. Though
17 Respondent was previously sanctioned by the Commission in 2002 (see Stipulation,
18 Agreement and Order of Admonishment, CJC No. 3790-F-100), the significance of
19 Respondent's prior disciplinary record is mitigated by the fact that the prior matter
20 involved a discrete incident of conduct unrelated to the conduct at issue in this matter.

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

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

5. Respondent agrees that he will promptly read and familiarize himself again with the Code of Judicial Conduct in its entirety and provide the Commission with confirmation of this fact within one month of the date of entry this stipulation, agreement and order.

Standard Additional Terms and Conditions

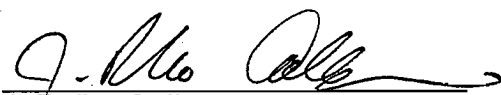
6. Respondent agrees that by entering into this stipulation and agreement, he waives his procedural rights and appeal rights in this proceeding pursuant to the Commission on Judicial Conduct Rules of Procedure and Article IV, Section 31 of the Washington State Constitution.

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

8. Respondent has represented himself in this proceeding. Respondent affirms he has consulted with, or has had an opportunity to consult with, counsel prior to entering into this stipulation and agreement.

Honorable Michael S. Hurtado

Date



J. Reiko Callner
Executive Director of the
Commission on Judicial Conduct

12-3-08
Date

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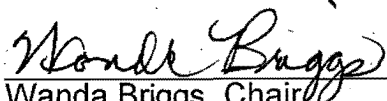
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ORDER OF ADMONISHMENT

Based on the above Stipulation and Agreement, the Commission on Judicial Conduct hereby orders Respondent, Judge Michael Hurtado, 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 5th day of December, 2008



Wanda Briggs, Chair
Commission on Judicial Conduct