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BEFORE THE STATE OF WASHINGTON
COMMISSION ON JUDICIAL CONDUCT

9 In Re the Matter of

CJC No. 5198-F-136

10 HONORABLE JUDTH R. EILER
11 Judge, King County District Court,

MINORITY OPINION FINDINGS OF
FACT AND CONCLUSIONS OF LAW

12
13 Respondent.

John McCarthy – Commission Member

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15 A fact finding hearing relating to the above-entitled matter was held on
16 November 18, 19, 20 and 21 2008. Members of the Commission present as a fact
17 finding panel were Joe Bell, Wanda Briggs, Marianne Connelly, Wayne Ehlers,
18 Candace Kalish, Hubert G. Locke, John A. McCarthy, Tom L. Morris, and Michael
19 Pontarolo (Presiding Officer).

20 The Respondent, Judith R. Eiler, was present and represented by her attorney
21 Anne M. Bremner. Disciplinary Counsel for the Commission on Judicial Conduct was
22 William H. Walsh.

23 The Commission on Judicial Conduct heard and considered the testimony of
24 witnesses, the exhibits and records referenced herein and briefs and argument of
25 counsel.

26 At the conclusion of the evidence, the Commission deliberated and based upon
27 the evidence makes the following:
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FINDINGS OF FACT

The Commission on Judicial Conduct (Commission) finds by clear, cogent, and convincing evidence as follows:

A. Background and procedural history with regard to the charges herein

1. The Honorable Judith R. Eiler (Respondent) is now and was at all times referenced in this document, a Judge of the King County District Court since 1992.
2. On February 14, 2008, the Commission filed a Statement of Allegations against The Honorable Judith Eiler, Respondent. Respondent filed a comprehensive response to the Statement of Allegations on March 15, 2008. Subsequently, the Commission filed an Amended Statement of Allegations on April 14, 2008 alleging that misconduct was continuing to occur at hearings even after Respondent was earlier notified.
3. On June 19, 2008, the Commission filed and published a Statement of Charges against Respondent. Those charges formally alleged that Respondent had violated Canons of the Code of Judicial Conduct. Specifically, Count One alleged as follows:

Count One: Violation of Canons 1, 2(A), 3(A)(3) and 3(A)(4) of the Code of Judicial Conduct.

Respondent is charged with violating Canons 1, 2(A), 2(B), 3(A) and 3(A)(4) of the Code of Judicial Conduct. It is charged that Respondent has engaged in a pattern or practice of rude, impatient, undignified and intimidating treatment of pro se litigants and attorneys in the courtroom. Respondent routinely interrupts litigants and/or their attorneys, and addresses them in an angry, disdainful, condescending and/or demeaning manner or tone. She has threatened in open court to fire court personnel if litigants spoke to them, and has otherwise failed to conduct herself in a judicious manner. Respondent's intemperate demeanor has intimidated, discouraged and prevented some pro se litigants from fully presenting their testimony or their

1 positions in court. Examples of such behavior are demonstrated, but not limited to the
2 following cases.

- 3 1. Harris Fence Co. vs. Sutherland (64-005870), heard 11-07-2006;
- 4 2. Sylvan S. Chulman vs. Shoreline Construction Co. (63-001844),
5 heard 02-09-07;
- 6 3. D'Hondt and Peck vs. Irwin and Western Moving (63-001578), heard
7 02-09-2007;
- 8 4. State vs. Elizabeth Alexandra (IO5366708), heard 09-07-2007;
- 9 5. State vs. Sandra Hinman (IT0030832), heard 09-07-2007;
- 10 6. State vs. Christain Matesan (IT0030811), heard 09-07-2007;
- 11 7. TLT Flooring vs. Empire Today (53-007973), heard 09-20-2007;
- 12 8. State vs. Evan Harlan (IT 0033132, heard 09-21-2007;
- 13 9. State vs. Anita Taylor (IO5514482), heard 09-21-2007;
- 14 10. Tan vs. Ho, Inc. (73-001736), heard 01-14-2008;
- 15 11. State vs. Jeremiah Walker (IO5569754), heard 02-04-2008;
- 16 12. State vs. Brian Hablutzal (IO5405813), heard 02-05-2008;
- 17 13. State vs. John Law (IO5282732), heard 02-05-2008;
- 18 14. State vs. Dennis Ford (IO5669069), heard 03-03-2008;
- 19 15. State vs. Adam Manning (IO5608421), heard 03-03-2008;

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21 **Count Two: Violation of Canons 1, 2(A) and 2(B) of the Code of Judicial**
22 **Conduct.**

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24 Respondent is further charged with violating Canons 1, 2(A) and 2(B) of the
25 Code of Judicial Conduct by reversing an order and dismissing a traffic infraction in
26 case IO5366708 in a fashion that suggested she was motivated by self-interest or
27 otherwise acted for improper purposes. It is charged that Respondent dismissed the
28 infraction only after the defendant complained to the Presiding Judge of the King
29 County District Court about Respondent's demeanor and the way the defendant was
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1 treated, and thus Respondent's actions created the appearance Respondent dismissed
2 the ticket to avoid further scrutiny of her demeanor and temperament.

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4 **B. By the way of further background and because the Commission did not**
5 **bifurcate the violation hearing from the sanction determination, the following**
6 **history is relevant:**

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8 4. The Commission and the Respondent had previously entered into a Stipulation,
9 Agreement and Order of Reprimand in CJC Matter No. 4148 on February 4, 2005 that
10 involved behavior similar to that alleged in the current matter, the behavior occurring
11 in 2002-2004. In resolving Matter 4148, Respondent admitted that her conduct
12 violated Canons 1, 2(A), 3(A)(1), 3(A)(3) and 3(A)(4) of the Code of Judicial Conduct.

13 5. The pattern of conduct complained of in that Statement of Allegations included
14 interrupting litigants, addressing them in an angry, condescending and demeaning tone
15 of voice, threatening to rule against litigants who interrupted or annoyed her or
16 otherwise failing to act in a manner which maintained public confidence in the integrity
17 and impartiality of the judiciary and engaging in a pattern or practice of rude,
18 impatient, and undignified treatment of pro se litigants in the courtroom.

19 6. In that Stipulation and Agreement, the Respondent agreed:

20
21 "…that she will not repeat such conduct in the future, mindful of the potential
22 threat any repetition of her conduct poses to public confidence in the integrity
23 and impartiality of the judiciary and to the administration of justice."

24 7. In accordance with that Stipulation and Agreement the sanctions imposed
25 included an agreement that she participate in behavior therapy with emphasis on
26 sensitivity training. She did so. A Certification of Completion in accordance with the
27 Stipulation, Agreement and Order of Reprimand was entered on August 4, 2006.

1 **EVIDENCE PRESENTED AND FINDINGS AS TO COUNT**
2 **ONE AND COUNT TWO**

3 **C. Because many hearings were cited as the basis of the charges, the following**
4 **are Findings with regard to each hearing and testimony presented. (Note:**
5 **Numbers correspond to the Statement of Charges).**

7 1. Harris Fence Company vs. Sutherland (64-005870), 11-7-2006 hearing. This
8 was a small claims action against Deenah Sutherland over a fence contract. Neither a
9 transcript of the hearing nor a complete audiotape of the proceeding was provided. The
10 hearing lasted over 42 minutes. A partial tape was played. The claim against Ms.
11 Sutherland was reduced, but she was found to owe more money. She felt the judge
12 mocked her, and she also expected more consumer advocacy and user friendliness for
13 lay people in small claims court. Judge Eiler denied her counterclaims. Judge Eiler
14 took much more time with this case than most small claims cases and, in interrupting,
15 was trying to find out from the defendant what she believed she owed for the fence.
16 On that day, Judge Eiler heard six trials in the morning and six in the afternoon. She
17 had three more trials to hear after this case. Judge Eiler indicates she has three basic
18 questions in small claims actions to get people to the point:

19 (1) (Directed to the Plaintiff) How do you get to the amount you claim is
20 owed?

21 (2) (Directed to the Plaintiff) Why should defendant pay?

22 (3) (Directed to the defendant) Why should you not pay?

23 Judge Eiler was hard on both sides, exhibited some sarcasm and abrupt
24 interruption, but gave many people a lot of time to speak on a jam-packed day.

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26 2 and 3. Sylvan S. Chulman vs. Shoreline Construction Company (63-001844),
27 02-09-2007, and D'Hondt and Peck vs. Irwin and Western Moving (63-001578), 02-09-
28 2007 hearing date. As one small claims case was finishing because the plaintiff had
29 not effectuated proper service, Judge Eiler directed a party to the clerk, Sandra Lampe,
30 to reschedule the case. Judge Eiler said to the plaintiff, "You can't ask her any

1 questions. She can't answer. If she does, I fire her. You probably don't want that to
2 happen." Sandra Lampe felt shocked and embarrassed. She has felt further
3 embarrassed by Judge Eiler because of her rude, intimidating, humiliating and abrasive
4 demeanor on many days. Ms. Lampe feels that Judge Eiler is great and easy going
5 when off the bench, but her opinion is that her lectures are unprofessional and
6 unbecoming. She has never addressed Judge Eiler's perceived shortcomings directly
7 with her. Judge Eiler's intention on this hearing was not to threaten the clerk since she
8 has no authority to fire the clerk, but rather, to protect her from disruption and to
9 protect her from being asked legal questions by pro ses. In that context she made the
10 exaggerated comment to the plaintiff and clerk. She normally would use the term
11 "could fire" to make the point. Asking legal advice has been a common problem in
12 courts of this nature. Judge Eiler was very apologetic to the clerk in the way that she
13 made this statement. She acknowledged her error.

14 4. State vs. Elizabeth Alexandra (I05366708), 09-07-2007 hearing. Neither a
15 transcript of the whole hearing nor a completely audible audiotape of the proceeding
16 was provided. Ms. Alexandra received a ticket for going 70 in a 60-mile-per-hour
17 speed zone. This was a contested traffic hearing, even though Ms. Alexandra really
18 just wanted a deferral so that the ticket would not go on her record. The officer had
19 clocked her at 75 but cited her for 70. She admitted at the hearing she was going 68.
20 She felt that Judge Eiler was unfair and had humiliated her and was a bully and did not
21 listen to her. She began to cry. She did not want to discuss her speed at the
22 Commission hearing. She has had another ticket deferred and dismissed and had been
23 to court on other matters. She wrote a complaint to the presiding judge and used the
24 words "official complaint" in the letter. The presiding judge forwarded it to Judge
25 Eiler. Judge Eiler listened to the tapes of the hearing, felt that she was too harsh, and
26 had interrupted her and reconsidered the ticket, dismissing the matter. Unsolicited, Ms.
27 Alexandra wrote a letter to the Commission in October 2007 retracting her complaint.
28 She is currently a 911 operator for a police department. She really wanted the ticket
29 dismissed and was satisfied with the ultimate dismissal. Judge Eiler believed that Ms.
30 Alexandra cried because she had not won. She agrees she was stern with her and did

1 interrupt her. She doesn't believe that someone should get away with excessive
2 speeding just because they are poor or come to court expecting a deferral or dismissal.
3 She serves on the Traffic Safety Commission and believes that, in some cases, to
4 modify driving behavior, a stern approach is appropriate. She sincerely believed that
5 she was too harsh to Ms. Alexandra, having listened to the tape and should have
6 acknowledged her more when she cried. And after her presiding judge's suggestions to
7 resolve it, she dismissed the charge. She has the legal authority to do so, and it is not
8 uncommon for judges to reconsider either the amount of a fine or the finding of an
9 infraction. Many infractions are resolved through the mail.

10 5. State vs. Sandra Hinman (IT0030832), 09-07-2007 hearing. No transcript, full
11 or partial, was provided for this hearing. Part of the audiotape was provided. Judge
12 Eiler apparently had a full calendar, called a case and told the lawyers to come forward.
13 She commented, in getting them to the bar, "Had breakfast. Won't bite much." No
14 complaint was apparently filed by anyone that was part of the hearing.

15 6. State vs. Christian Matesan (IT0030811), 09-07-2007 hearing. No transcript,
16 full or partial, was provided for this hearing. Part of the audiotape was provided.
17 Judge Eiler apparently had a full courtroom with several litigants and lawyers. She
18 called some attorneys forward at some point, and to get their attention, whistled,
19 slapped the counter and told them to pay attention. No complaint was apparently filed
20 by any litigant or attorney in this case. One attorney filed an affidavit of prejudice
21 which was granted in due course.

22 7. TLT Flooring vs. Empire Today (53-007973), 09-20-2007 hearing. No
23 transcript, full or partial, was provided for this hearing. Part of the audiotape was
24 presented. No complaint was apparently filed by either litigants or attorneys in this
25 case. Judge Eiler made comments to the attorneys, such as, "Don't put words in my
26 mouth." "Don't interrupt the other side." "Say objection." "Wise counsel" would do
27 something else. This case was 45 minutes; only parts and sound bites were presented.

28 8. State vs. Evan Harlan (IT0033132), 09-21-2007 hearing. A transcript of this
29 hearing and audiotape was provided. Not all parties are audible in the tape. Evan
30 Harlan received a traffic infraction for 57 in a 35. His father, Scott Harlan, wanted his

1 son to take the ticket to court, and wanted his son to personally appear at a contested
2 hearing. The son did not timely request a hearing and was told that he could write an
3 explanation by mail even though the ticket had already been sent to the DOL for non
4 response. He was advised he could only respond then by mail but did not comply.
5 Nonetheless, the son and father appeared in court, contrary to the rules, and wanted a
6 case deferred and ultimately dismissed. Their method to be heard circumvented the
7 court rules and written instructions. The father had general observations of the judge,
8 including interrupting and demeaning comments of his son. At one point when the
9 father wanted to speak for his son, Judge Eiler said, "He's not a puppet. You don't get
10 to move his mouth." Judge Eiler did not grant a deferment because of the son's speed
11 and reduced the \$235 fine to \$200. This young man has other tickets he has taken to
12 court, and the father has had other children who have contested or mitigated tickets.
13 Evan Harlan's most recent ticket was within the last month. Judge Eiler testified that
14 she sees that some parents want to see their children get out of tickets as opposed to
15 taking responsibility for them or learning any lessons from those. She insists that the
16 teenagers speak on their own behalf. Sometimes she believes she can change their
17 driving behavior through a stern lecture, and she will do that. In this case, the young
18 man continues to get tickets and acknowledges he learned nothing from the experience.
19 The father expected special treatment, did not get the deferral he wanted and didn't like
20 the stern lecture his son received.

21 9. State vs. Anita Taylor (I05514482), 09-21-2007 hearing. Neither a transcript of
22 this hearing, nor a completely audible audiotape of the proceeding was provided.
23 Apparently, Ms. Taylor had received a ticket for going 80 mph in a 60 and had
24 apparently tried to explain away her speed by saying she was going to church. In an
25 attempt at humor, Judge Eiler made a comment to the effect of, "What would Jesus
26 do?" citing the language of a popular bracelet. There is no evidence of the interplay
27 between the judge and the defendant. Judge Eiler also said to her that was "not the
28 kind of behavior we are looking for." Judge Eiler reduced the fine. No party to this
29 proceeding filed this complaint.

1 10. Tan vs. Ho, Inc. (73-001736), 01-14-2008 hearing. Mr. Tan was suing, in small
2 claims court, Lexus of Bellevue over a car he had purchased. No transcript, full or
3 partial, was provided. Part of the audiotape of the hearing was presented at the
4 Commission hearing. The hearing lasted over 30 minutes. Mr. Tan felt that he did not
5 get to present his full case and that Judge Eiler did not consider his photos and other
6 evidence. He felt frustrated and discouraged by interruptions and berating by Judge
7 Eiler. Judge Eiler ruled that his automobile warranty did not apply to cover prior
8 damage. She further ruled that Mr. Tan had not done the maintenance. She felt that
9 Mr. Tan, although articulate, had a limited ability and understanding of the law and
10 would not accept her explanation and the clear language on the back of the contract.
11 Mr. Tan has had other cases in other small claims courts as well, including cases
12 involving automobiles. He was articulate in explaining that he objected to the way she
13 controlled the questioning in an inquisition style and the way she commented on the
14 evidence as it was being presented as opposed to letting each side present their case.
15 Since a full transcript was not provided we are unable to determine if all his evidence
16 was considered.

17 11. State vs. Jeremiah Walker (IO5569754), 02-04-2008. Mr. Walker received a
18 traffic infraction for going 15 miles over the limit and not wearing a seatbelt. A
19 complete transcript of the hearing which lasted less than three minutes was provided
20 and we listened to an audiotape of the hearing. Mr. Walker said he was from Missouri
21 and didn't know all the laws of other states. Judge Eiler commented, "We don't troll for
22 stupid people out of state who speed over the speed limit that they think it is." Mr.
23 Walker said he was going with the traffic flow. Judge Eiler said, "You are a mature
24 adult, so everybody doing it doesn't cut it, period. Duh." None of the litigants filed a
25 complaint.

26 12. State vs. Brian Hablutzel (IO5405813), 02-05-2008. This was a traffic
27 mitigation case which lasted two and a half minutes. A full transcript of the hearing
28 and audiotape of the proceeding was played. Mr. Hablutzel wanted to mitigate the fine
29 because he was driving with the flow of traffic. Judge Eiler said, "So do you have a
30 better reason for me to reduce the amount of this infraction, other than telling me that

1 you were an idiot and driving with the cars around you?" Mr. Hablutzel replied, "No, I
2 would never say that I was an idiot..." However, the judge reduced the infraction down
3 and lowered the ticket fine and said, "If you have an idiot behind you that is acting
4 aggressively, slow down, let them go around you and they collect the ticket. You
5 speed up, you collect it." None of the litigants filed a complaint.

6 13. State vs. John Law (IO5282732), 02-05-2008 hearing. This was a traffic
7 mitigation hearing which lasted less than three minutes. A complete transcript of the
8 hearing and an audiotape of the proceeding was played. None of the litigants filed a
9 complaint regarding their communication with the judge. Mr. Law received a ticket for
10 speeding and no insurance. Mr. Law had implied that he hadn't seen the ticket and
11 wanted to see the original filed with the court. Judge Eiler said, "Yes, that would be
12 part of what you get, so don't be smart about just the back of the ticket." Mr. Law
13 challenged the copy of the ticket because he hadn't seen the original. Mr. Law actually
14 had the officer's report. He showed his proof of insurance, and that charge was
15 dismissed. He did not file a complaint regarding his contact with the judge.

16 14. State vs. Dennis Ford (IO5669069), 03-03-2008 hearing. This was a traffic
17 mitigation hearing that lasted less than one and a half minutes. Mr. Ford wanted a fine
18 reduced from 19 mph over the limit. Mr. Ford said, "Your Honor, I have no excuse.
19 This is my first stop in about 15 years." Judge Eiler responded in a humorous, sarcastic
20 fashion, "But oh, what a ticket it is." Mr. Ford said he was passing someone to make
21 an exit. Judge Eiler said, "You know, that's the problem with mature people. They
22 think, I see my exit, so I have to get ahead. Imagine that, ahead of those other trucks.
23 Then what did you probably do? You probably put on your brakes to slow down to get
24 off at the off ramp, making all of those people behind you think you were an idiot, sped
25 up, then slowed everybody down. When if you had slowed down first, you could have
26 slid in behind them off at the off ramp, hardly touched the brakes. Those other people
27 would be thinking highly of you, as would the Court." Judge Eiler reduced the fine and
28 said, "But you need to change that driving behavior because other people will think
29 better of you." He did not file a complaint regarding his contact with the judge.

1 15. State vs. Adam Manning, (IO5608421), 03-03-2008. This was a traffic
2 infraction. The hearing lasted less than two minutes. A complete transcript and
3 audiotape was provided. Mr. Manning was trying to mitigate a ticket for 22 mph over
4 the limit. Judge Eiler said, "I will reduce it down to \$200. If you drive like an idiot
5 because you are late for work, you are gonna have to pay for it." Mr. Manning did not
6 file a complaint.

7
8 **D. The following are findings and summaries of the testimony of other**
9 **witnesses.**

10 16. Patricia Freeman was a pro se defendant in a civil small claims case filed by her
11 neighbor (*Redmond Plumbing vs. Freeman*). She also was an attorney who effectively
12 retired over two years ago. She took three trial notebooks to the small-claims trial.
13 Too many documents were submitted for this small claims action. The claims against
14 her and her cross-claims were heard over a two-hour period and involved four cases. It
15 was a neighborhood squabble with claims of failing to pay a contract for plumbing
16 work, not filling a plumbing trench resulting in Ms. Freeman fainting and her dog
17 being injured by falling in the trench. Also, other claims involved a fence line dispute
18 and damage to a vehicle in building the fence. Neither a transcript of the hearing, full
19 or partial, nor a complete audiotape was provided. Sound bites were played. Freeman
20 was alleged to have not paid a neighbor for contract plumbing work he had done. She
21 cross-claimed that because he left a trench in her yard, her Pekinese dog fell in it; she
22 claimed she fainted, that she had a concussion, and had to go to the doctor, and the dog
23 had to go to the vet.

24
25 She felt that Judge Eiler was rude, interrupted her and that she was not able to
26 present her case. She lost her claims. Judge Eiler chastised her for not having a
27 written contract with her neighbor which would have resolved disputed contract issues
28 and for not taking some responsibility for her dog falling in the trench and for filing
29 retaliatory claims. Judge Eiler used the phrase that, "Wise people use pens." Judge
30 Eiler testified that trial notebooks are discouraged in small claims actions because of
the volume of cases and the number of physical papers that the clerk is required to store

1 and maintain. During a small claims docket, all parties are warned in advance that the
2 judge may interrupt them to move the case along. The judge also acknowledged she
3 was tough on the lawyer for bringing a claim for her dog's emotional distress or vet
4 bill. Judge Eiler denied everyone's claim and, although harsh, her decision was very
5 well reasoned.

6 17. Alexander Ludeke has been a District Court clerk for over 16 years. He has
7 worked with Judge Eiler on many occasions. He finds her to be abrupt, rude and
8 condescending at times. He feels embarrassed in her court. He does believe she speeds
9 cases up, and trials are completed in a short time. She gets to the facts. Off the bench,
10 he has found her to be "awesome, very nice and friendly." He had never talked to her
11 personally about his in-court opinions of her. He acknowledges he doesn't like
12 confrontation and also never talked to her presiding judge about her.

13 18. Tamara Mazanti testified regarding a ticket infraction hearing her son, Kris
14 Mazanti, had over six years ago in 2002. He contested the ticket, even though it was
15 clearly committed, to keep his record clean. No transcript of the hearing, full or partial,
16 was presented. No audiotape was presented. Ms. Mazanti felt that going to court was
17 enough punishment for her son and that the charge should have been dismissed. She
18 had received other tickets and was able to get them dismissed. Ms. Mazanti felt the
19 judge was rude and sarcastic and testified that the judge implied or called her son
20 "dumb." Judge Eiler does not believe that it is a proper way to teach young people the
21 importance of good driving by always dismissing their case and agrees she was strong
22 and stern with him. She believes that tough love can be helpful to modify behavior and
23 that she sees parents who enable their children and hover over them in court
24 protectively while not holding them accountable. Kris Mazanti has had at least three
25 other tickets deferred, and his mom paid the fine on this one. This case was part of the
26 prior disciplinary action, over six years old, and should not have been considered.

27 19. Marcus Fry is an attorney in Yakima who had a district court civil case
28 involving the rights to a show dog scheduled before Judge Eiler. In a telephone pretrial
29 conference in which the judge was trying to see if the parties were ready for trial and
30 was trying to schedule things, he felt the judge was rude to him because she cut him off

1 at one time when he was taking a long time to answer a question when she said, "I
2 didn't ask for an explanation. I asked for a date." He felt the judge was flying off the
3 handle and he was "angry and shocked." Judge Eiler testified that the parties had filed
4 entirely too many pleadings for this district court summary judgment proceeding and
5 were taking an extended period of time at every stage of the process. She was trying to
6 get an answer to a rather uncomplicated question. She had explained that the phones
7 were archaic and that the attorneys needed to make short statements. She was only
8 able to talk when he stopped talking because of the phone; she cut him off after his
9 statement was too long. She noted that she believed that the attorneys also complained
10 to the Bar Association about each other in this case and filed pleadings about that. Mr.
11 Fry had limited trial experience, with only two court trials of his own and no jury trials.

12 20. Charles Babb testified regarding a hearing in 2003 which was a small claims
13 action between him and his ex-wife over children's medical bills. This case was
14 addressed in the previous Commission investigation and sanctions in 2005 and should
15 not have been presented as part of this case. Judge Eiler interrupted him and chastised
16 him, threatening to dismiss his case if he continued to interrupt her. He had been to
17 court 17 times previously, including some small claims issues, collection issues and
18 seven Superior Court cases. A transcript of his hearing was provided, and a tape
19 presented. This was resolved in the previous allegation and Judge Eiler undertook
20 counseling to address the specific issue related to this complaint.

21 21. Ken Karlberg is an attorney primarily with experience in commercial litigation
22 and virtually no district court experience, except his own cases he had an interest in.
23 He appeared as attorney for his stepson at a show cause hearing wherein a restraining
24 order had been entered against his stepson. He had never handled any type of
25 protection or restraining order before, be it under RCW 10.55 or RCW 10.99 or RCW
26 26. He didn't know the difference. A death threat was involved. Mr. Karlberg had
27 expected Judge Eiler, on her own, to grant a reciprocal restraining order against the
28 young lady who had obtained the order against his stepson. Mr. Karlberg also
29 represented himself in civil litigation involving repairs to his condo. He had alleged
30 that the other side had scratched his floors and upset and frightened his animal while

1 doing repairs in his condo, and argued emotional distress to the animal in a
2 counterclaim. Judge Eiler testified that the animal was a cat. He apparently didn't have
3 a cat but had a dog. Judge Eiler dismissed his first claim on summary judgment. Mr.
4 Karlberg gave several personal observations and opinions including that he felt that
5 Judge Eiler was outside boundaries of ethics in how she handled his cases and others he
6 observed, and that the public needed to be protected. He felt she was demeaning at
7 times and lacking in dignity. Neither a transcript of any of his hearings was provided
8 nor an audiotape was played.

9 22. Judge Victoria Seitz testified for the respondent. She has been a District Court
10 judge for 17 years and handled many cases similar to those heard by Judge Eiler in
11 King County District Court. She testified about the high volume of cases in their court,
12 that their caseload is 120 percent of what it should be, that the court is lacking in four
13 judges based on caseload studies by the Administrative Office of the Courts. She
14 discussed the King County Executive closing two courthouses six years ago, depriving
15 the County of courtrooms and requiring sitting judges to commute long distances
16 resulting in additional stress. She testified about the physical effect and stress which
17 has resulted from these large caseloads. She also testified that District Court judges
18 respond to letters daily, make decisions on infractions or reconsider or otherwise
19 address cases in the mail at the same time they are handling their in-court dockets.

20 23. Judge Barbara Linde is presiding judge at King County District Court. She
21 oversees the work assignments, administration and budget, pursuant to General Rule
22 29, for 21 judges. She supervises the employees of the court as well. She testified that
23 Judge Eiler is a delight to work with, that she is good at coming up with ideas, but that
24 she has had more complaints than other judges relating to demeanor. She
25 acknowledges not relating all these complaints to Judge Eiler. In fairness to Judge
26 Linde, she related new uncharged complaints about Judge Eiler only in response to
27 questions by the hearing panel. Those questions were probably objectionable since
28 they were heretofore undisclosed.

29 24. John Plovie has been a civil litigation collection attorney for 27 years. He has
30 appeared before Judge Eiler dozens of times. He finds her to be very fair,

1 compassionate and efficient. He feels that she is willing to let both sides have their
2 say, that she asks good questions, that she is very consistent and does a very good job
3 of handling high volume pro se calendars. She does not let litigants go on endlessly,
4 she creates fair boundaries and has great integrity.

5 25. Robert Friedman has been an attorney for 37 years. He also serves as a pro tem
6 commissioner in a District Court. He has appeared before Judge Eiler hundreds of
7 times. He finds Judge Eiler to be very fair, that she "gives no gratuitous results," that
8 she is very efficient in getting to the point and controls the courtroom well. He sees her
9 talk to many pro se litigants. He does see her interrupt parties if they are not focused
10 on the issue, but gives all a chance to be heard.

11 26. Judge Robert McBeth is a retired judge, having served for 24 years. He is a
12 prior "Washington State Judge of the Year." He has done a tremendous amount of
13 teaching at the State and national level. He reviewed all of the files related to the
14 charged cases and read the deposition presented. He has taught judicial sanctions at the
15 National Judicial College. He testified that violations and sanctions must be based on
16 decisional law pursuant to the Washington State Constitution, decisions of the Courts,
17 not decisions of the Commission. He has reviewed all of the decisions of Washington
18 State and the United States and was limited in his testimony with regard to decisional
19 law on sanctions for judges with demeanor complaints. His opinion was that there
20 were no demeanor-alone founded complaints in the United States that have resulted in
21 the drastic sanctions of removal from office, which was the discipline sought by
22 Disciplinary Counsel in this hearing. Further, since 2006 he found only two cases in the
23 U.S. where demeanor alone resulted in a find of a Canon violation. On the issue of the
24 "should" vs. "shall," language of the Canons, he believes that even though the
25 Washington State Canons use the aspirational term, "should," with regard to Canon
26 2(A)(3), at some point, a line is crossed wherein it becomes a mandatory requirement.
27 He testified that in almost all cases in the United States where serious sanctions were
28 imposed for a judge saying something in court, it was verbiage plus some aggravating
29 factor which resulted in that sanction. Judge McBeth agreed to testify for free in this
30 case.

1 27. Catherine Clark testified for the respondent. She has been an attorney for 17
2 years and practiced in front of Judge Eiler recently. In the very first hearing she had
3 before Judge Eiler, the Judge denied her motion to continue. She observed Judge Eiler
4 during her six-hour trial and felt that she gave a fair opportunity for all to present their
5 case. She also felt that Judge Eiler has the characteristics needed to make difficult
6 decisions, that she was professional, direct and wanted to move things along. She
7 believes that the process can sometimes be hurtful and difficult for people to hear. She
8 further believes that Judge Eiler leaves to the attorneys the difficult task of dealing with
9 their client's emotions and Judge Eiler focuses on fair decisions with dignity. Attorney
10 Clark came forward to volunteer to testify after hearing a radio discussion of the case.

11 28. Sandy Carr has worked for the King County Sheriff's Office for 21 years and
12 has worked at Issaquah for Judge Eiler for one and one-half years. She testified for the
13 respondent. She observes Judge Eiler almost daily and has seen Judge Eiler to be fair
14 and down-to-earth. She attempts to be kind and she is always straightforward. She
15 feels Judge Eiler is orderly, that she has a great sense of humor, but runs a nice,
16 efficient court. She believes Judge Eiler does her job more efficiently than other judges
17 and has heard no complaints regarding mocking or belittling behavior. Neither of the
18 two clerks who testified on behalf of the Disciplinary Counsel complained about Judge
19 Eiler. She enjoys working with Judge Eiler.

20 29. Judge Eiler testified that she has an extensive resume of practicing law and
21 serving as a judge for many years. She has been selected by the governor to be on the
22 Washington State Traffic Safety Commission, a position she is passionate about, and
23 has taught law at Seattle U Law School. Because of the newspaper article describing
24 the filing of this complaint, she was asked not to teach this year. She is very active in
25 many community events. Her first degree is in education, and she has a master's
26 degree in communication. She chose becoming a judge partly as a way of teaching and
27 changing people's behavior. She feels that she is able to positively change what people
28 do and that sometimes tough love is important. She acknowledges that she needs
29 improvement, but doesn't believe a judge's role is to please everyone. She indicated
30 that some judges would hand out traffic deferments and dismissals like candy, but this

1 doesn't help society or the person when there are no consequences for their actions.
2 She runs a busy court and describes her style as one that is people-orientated in a
3 people court. She acknowledges her imperfections. It is not uncommon for her to have
4 26 full trials scheduled on a small claims calendar in a given day. Many cases settle,
5 but it's not uncommon for her to have six full trials in the morning and six in the
6 afternoon of small claims cases.

7 If attorneys or parties dislike her approach or style; they have an ability to file
8 an affidavit of prejudice and get the case transferred. She doesn't get many of these.
9 It's not uncommon for her to hear 70 traffic cases in the morning and another 70 in the
10 afternoon. She probably has over 5000 plus trial matters scheduled before her in a
11 given year. Thus the six people who complained are not reflective of her work. She
12 believed she's an equal-opportunity, hard person. She does believe that sarcasm and
13 humor sometimes can be appropriate. She believes she runs a court of law as opposed
14 to a court of feelings and not everyone can feel happy in court. She wished that the
15 presiding judge had talked to her about other complaints of her demeanor that she had
16 not mentioned to her but brought up at the hearing.

17 Her passion for hearing traffic cases stems from a family car accident many
18 years ago where seatbelts in the car saved the lives of family members. She is
19 passionate to save lives through conducting traffic hearings in an educational and
20 hopefully behavioral modification mode. She admits that she needs to work on her
21 demeanor; that she is not perfect. She has observed other judges, and she needs to
22 work more on her voice, having listened to all the tapes of these proceedings. She is
23 open to change. She changed her behavior after the previous stipulation involving the
24 Babb matter and other cases. She learned not to tell people their behavior might result
25 in her giving a different ruling. She previously had learned through her work with Dr.
26 Rutt over several days and believes she needs to learn more. She spent 20 to 25 hours
27 with Dr. Rutt.

28 She also believes that it's good to be tough with some people, and that if she
29 wanted a job where people liked her, she wouldn't be a judge. She believes a judge is
30 like a vice principal in many respects. Sometimes someone has to deliver the bad

1 news. She believes that nobody comes to court because they like to or because they are
2 really having a good day. She believes some of these tapes do show her to be
3 impatient, but do not show her to be partial. She agrees she should stop using sarcasm
4 at all. She doesn't believe the limited sound bites, tapes and transcripts presented at
5 this hearing are reflective of the thousands of cases she has heard in her career. In
6 some situations, because of being required to handle many dockets, she has pushed
7 cases and people faster than she would like so every case could be heard on the docket
8 that day. When she has used terms such as "idiot," she is referring to the behavior. She
9 agrees she doesn't do that now.

10 30. Jeff Tolman is a lawyer in Poulsbo and a part-time Municipal Court judge. He
11 has been a lawyer over 30 years. He has taught several legal courses, written over 260
12 published articles about being a lawyer and judge. He recently wrote an article entitled
13 "Mother Theresa In A Black Robe or Pavlov," which was published in the *Washington*
14 *State Bar News*. He believes that a judge's job and role, particularly in people's courts,
15 include being nice to people who get it, but being stern to people who don't and who
16 continue to come back without changing their behavior. He believes that a judge's role
17 in District Court does include behavioral modification. He believes the best judges say
18 it like they see it, try to do it in a dignified fashion and are tough when it is warranted.
19 The easy course is always not to offend anyone. He also believes that much of
20 communication is the context in which things are said and how they are said. He
21 believes that judges are generally more patient and kinder and less strict with pro ses,
22 yet, they need to be consistent and sometimes tough, firm or harsh without being
23 demeaning. He acknowledged how difficult it is for a judge to use humor in changing
24 behavior, yet it is important for judges to use various techniques to help people change,
25 he believes a lot depends on the context of the communication.

26
27 **E. Other General Findings.**

28
29 31. The Respondent's behavior outside of the courtroom and away from the bench
30 has been exemplary, but it is within the courtroom, sitting as judge, that the
Respondent's demeanor, attitude, verbal expression, conduct and treatment of litigants,

1 attorneys and court personnel is alleged to have violated the standards set by the Code
2 of Judicial Conduct.

3 32. The Respondent, by her words, interruptions and tone of voice treated some pro
4 se litigants, witnesses, and attorneys appearing before her in an impatient, undignified,
5 and discourteous manner. The Respondent utilized a pattern of sarcasm, interruption,
6 and intimidation which caused litigants to become frustrated and feel that they were not
7 treated fairly.

8 33. The Respondent's courtroom behavior towards litigants as described above, was
9 not limited to an isolated event or case but remained a pattern of behavior after the
10 August 4, 2006 Certificate of Completion, arising out of her earlier judicial discipline.

11 34. The behavioral counseling undergone by the Respondent after her 2005
12 Stipulation and Agreement for Reprimand did not sufficiently result in the Respondent
13 modifying her behavior while acting within her official capacity within the courtroom.

14 15 **CONCLUSIONS OF LAW**

16
17 1. The Respondent's pattern of behavior described above in some cases is not an
18 acceptable "style" of courtroom behavior when used in the manner and with the
19 frequency as witnessed by courtroom personnel and as experienced by litigants who
20 appeared before the Respondent. The tone is too harsh. The interruptions are
21 discourteous and the style is too argumentative and impatient in some cases

22 2. The Respondent's courtroom pattern of inappropriate demeanor is marked
23 primarily by the intonation of her voice. Her voice inflections with words that are
24 discourteous were frequent and too commonplace.

25 3. There was no evidence to establish that the Respondent's decisions in the above
26 cases were erroneous. In fact the evidence is clear that the decisions were correct
27 legally and factually; however in a number of cases, litigants were not allowed to tell
28 their cases in their way or were so intimidated by the Respondent that they did not feel
29 fully heard. No evidence was presented at the Commission hearing from any litigant
30 that was not allowed to be presented at the trial. There is insufficient evidence that

1 anyone did not have a full right to be heard in the context of the type of hearings she
2 was conducting, ie traffic, small claims, other district court cases. In many charged
3 cases, Judge Eiler gave parties more time than normal, sometimes 2 hours on a single
4 small claims case when 12 such cases were scheduled in a half day docket. Therefore
5 there is no violation of Canon 3(A)(4) in Count One.

6 4. The Commission on Judicial Conduct determines by clear, cogent and
7 convincing evidence that under Count One of the Statement of Charges, the
8 Respondent has violated Canons 3(A)(3) of the Code of Judicial Conduct (CJC) by
9 being impatient, undignified and discourteous in some hearings. Respondent has not
10 violated Canon 1, and 2(A) of the Code of Judicial Conduct. There is insufficient
11 evidence that the integrity, impartiality, or independence of the Judiciary was affected
12 and these are principles of these Canons. She has shown impartiality, integrity and
13 substantial independence. This is truly a demeanor case only.

14 5. As to Count One, the evidence does not support a finding that she violated
15 appropriate demeanor standards in all of the example hearings. The evidence only
16 supports Canon 3(A)(3) violations in the following hearings:

- 17 1. *State vs. Jeremiah Walker* (IO5569754), 02-04-2008;
- 18 2. *State vs. Brian Hablutzel* (IO5405813), 02-05-2008;
- 19 3. *State vs. Adam Manning* (IO5608421), 03-03-2008.

20 In all three of these cases, the Judge used terms such as “idiot” and “stupid”.
21 She did not call these people those names and generally used the term to describe their
22 behavior, but it was used in a way to be undignified and discourteous.

- 23 4. *Sylvan S. Chulman vs. Shoreline Construction Co.* (63-001844),
24 02-09-07;

25 Her comments to prevent the pro se litigant from talking to the clerk, Sandra
26 Lampe, ie. “I fire her...” were not intended to be embarrassing to the clerk. They were
27 however undignified and discourteous.

28 Although Judge Eiler was tough, stern and controlling in several other hearings,
29 the evidence does not support a finding that she crossed the line of a Canon violation in
30 the other hearings. Some people who have their own perception of justice in their case

1 will always be offended by the decision or manner that a judge conducts themselves or
2 communicates with them. Some measure of balanced objectivity discerns between a
3 best practice or perfect judge and an actual Canon violation. Her interruptions are in
4 the context of hearing more cases than should be scheduled on a given docket and her
5 intent to give all the litigants waiting in court a hearing on their traffic ticket or small
6 claim action. There is nothing inappropriate with a judge using humor, but sarcasm can
7 be lost on many and comes across as discourteous or intimidating, particularly to the
8 most sensitive.

9 6. As to Count Two, evidence does not establish by clear, cogent, and convincing
10 evidence that the Respondent attempted to influence a potential witness in a
11 Commission proceeding nor use or appear to use her authority to serve her private
12 interests contrary to the Canons as pleaded in Count Two. That charge is not found.

13 7. The applicable sections of the Code are as follows:

14
15 **Canon 1**

16 **Judges shall uphold the integrity and independence of the judiciary.**

17 An independent and honorable judiciary is indispensable to justice in our
18 society. **Judges should participate in establishing, maintaining and**
19 **enforcing high standards of judicial conduct and shall personally**
20 **observe those standards so that the integrity and independence of**
21 **the judiciary will be preserved.**

21 (Emphasis added.)

22 The provisions of this Code are to be construed and applied to further that objective.
23 Although high standards for a judge can apply to every alleged indiscretion there is no
24 evidence that Judge Eiler's conduct did not preserve principles of integrity and
25 independence.

26 **Canon 2**

27 **Judges should avoid impropriety and the appearance of impropriety in all their**
28 **activities.**

29 (A) Judges should respect and comply with the law and **should act at**
30 **all times in a manner that promotes public confidence in the**
integrity and impartiality of the judiciary.

(Emphasis added.)

1 Although Judge Eiler's conduct and demeanor impact public confidence, they do not
2 impact confidence in the integrity and impartiality of the judiciary. She treats all people
3 in similar fashion.

4 **Canon 3**

5 **Judges shall perform the duties of their office impartially and diligently.**

6
7 The judicial duties of judges should take precedence over all other
8 activities. Their judicial duties include all the duties of office prescribed
9 by law. **In the performance of these duties, the following standards
10 apply:**

11 **(A) Adjudicative Responsibilities**

12 **(3) Judges should be patient, dignified and courteous to litigants,**
13 **jurors, witnesses, lawyers and others with whom judges deal in their**
14 **official capacity, and should require similar conduct of lawyers and**
15 **of the staff, court officials and others subject to their direction and**
16 **control.**

17 (Emphasis added.)

18 This is the provision she has violated.

19 **(4) Judges should accord to every person who is legally interested in**
20 **a proceeding, or that person's lawyer, full right to be heard**
21 **according to law, and, except as authorized by law neither initiate**
22 **nor consider ex parte or other communications concerning a pending**
23 **or impending proceeding. Judges, however, may obtain the advice**
24 **of a disinterested expert on the law applicable to a proceeding before**
25 **them, by amicus curiae only, if they afford the parties reasonable**
26 **opportunity to respond.**

27 (Emphasis added.)

28 **Sanctions for Violations**

29 Under both the Rules of the Commission on Judicial Conduct and Case Law,
30 there are non-exclusive factors the CJC must consider in determining the appropriate
sanctions for a violation of the Code of Judicial Conduct.

1 **A. Whether the misconduct is an isolated instance or evidenced a pattern of**
2 **conduct.**

3 The conduct alleged in Count One of the Statement of Charges and as recited in
4 the Findings of Fact constitutes an ongoing pattern and practice of impatient,
5 undignified and discourteous conduct of the Respondent towards litigants, including
6 pro se litigants, witnesses and attorneys.

7
8 **B. The nature, extent and frequency of occurrence of the acts of misconduct.**

9 The extent of occurrence of the acts have been significant occurring over
10 several years and involving similar conduct and ongoing even to the point that
11 sustainable complaints continued up to the time of hearing. Complaints alone however
12 are not determinative. The frequency is not clear since she has heard thousands of these
13 hearings and only four are identified in this finding as being a violation. The nature of
14 the acts involves a demeanor issue. In these high volume fast paced, people court, it
15 can be anticipated that complaints will occur if someone is tough or stern, yet a judge
16 can be tough without crossing the line of a demeanor violation.

17
18 **C. Whether the misconduct occurred in or out of the courtroom.**

19 The misconduct cited in Count One occurred within the courtroom.

20
21 **D. Whether the misconduct occurred in the Judge's official capacity or in her**
22 **private life.**

23 The misconduct occurred in the judge's official capacity.

24
25 **E. Whether the Judge flagrantly and intentionally violated the oath of office.**

26 The Judge did not flagrantly and intentionally violate the oath of office. Her
27 intentions were always to change behavior although the tone of her communication was
28 not always appropriate.

1 **F. The nature and extent to which the acts of misconduct have been injurious**
2 **to other persons.**

3 The actions of the Respondent have diminished public confidence to some
4 people who appear in a high volume calendar with regard to the professional demeanor
5 of the judiciary. The Respondent's intemperate behavior and lack of judicial patience
6 and understanding were offensive such that litigants were distressed. Attempts at
7 sarcasm and humor, at the expense of litigants who are inexperienced or uninformed,
8 have diluted the expectation of justice and the anticipation that justice can be attained
9 in her court on some calendars for some people. Her courtroom demeanor went over
10 the line of generally acceptable demeanor needed to complete her duties and maintain
11 control within the courtroom. There is no evidence that any litigant was injured as to
12 their claim or resolution of their claim. Most said they agreed with the ruling yet most
13 probably did not agree at the time it was given because of the manner she delivered it.
14 Most expected to win their small claims action or get their ticket dismissed and did not
15 truly like the result. Many of these complaints came from court personnel or
16 Commission investigators listening to audio tapes.

17
18 **G. The extent to which the judge exploited the judge's official capacity to**
19 **satisfy personal desires.**

20 She did not do this to satisfy personal desires other than her perception of the
21 appropriate demeanor of a judge in these types of cases to control her calendar.
22

23 **H. The effect the misconduct has on the integrity of and respect for the**
24 **judiciary.**

25 Some witnesses before the Commission testified that they left the Respondent
26 courtroom with little respect for the judiciary or the judicial process. They felt they did
27 not have the opportunity to present their case; that they were scolded and intimidated
28 by the Respondent. Some litigants said they gave up because of interruptions.

29 The evidence supports a finding that there were frequent interruptions against
30 inexperienced litigants who questioned the Respondent or failed to present evidence in

1 a manner satisfactory to the Respondent. However, several attorneys, part time judges
2 and regular court employees believe her control of the calendar is appropriate and
3 professional. Many have a great deal of respect for her. At worst, disrespect of the
4 judiciary in general has occurred because of her demeanor yet, no one has questioned
5 her integrity or that of the judiciary in general because of her demeanor.

6
7 **I. Whether the Judge has acknowledged or recognized that the acts occurred.**

8 The Respondent has acknowledged that the acts occurred and that the words and
9 tone recited in both the audio clips and transcripts were hers. She asserts, in general,
10 that given the nature of her position and duties arising from that position including the
11 amount of work load, that she is not perfect. She asserts that with the number of
12 hearings she hears, intemperate hearings are small in proportion to all the hearings.
13 She does acknowledge periods of impatience and discourteous behavior or times that
14 she is not “at her best” in some of the examples. She does see some of this behavior as
15 necessary to perform her duties and to be a “teacher.” She does acknowledge that
16 some of the sound bites do display her imperfection. Her response and testimony
17 defending herself however must be considered in light of the drastic demand by
18 disciplinary counsel that she be removed from office if found to have violated primarily
19 demeanor related Canons.

20
21 **J. Whether the Judge has evidenced an effort to change or modify her**
22 **conduct.**

23 In writing and in testimony, the Respondent has indicated her desire to modify
24 her behavior, primarily her voice and sarcasm. She did undertake an effort in the
25 past and is willing to undergo new efforts.

26
27 **K. The Judge’s length of service in a judicial capacity.**

28 The Respondent has served for approximately 16 years as a judge. This length
29 of time under these circumstances does not mitigate the seriousness of the
30 Respondent’s behavior. Given the length of time on the bench it is expected that the

1 Respondent would be better able to employ acceptable courtroom demeanor in
2 completing her duties. Courts can be efficient and businesslike while being patient
3 and deliberate. Yet she has served the judiciary well in many capacities at the local and
4 state level for a long judicial record.

5
6 **L. Whether there has been prior disciplinary action concerning the Judge.**

7 Respondent has previously been subject to discipline by way of Stipulation and
8 Agreement to Reprimand in January 2005. As part of the Stipulation Respondent
9 agreed to participate in ethics training, to promptly read and familiarize herself with the
10 Code of Conduct in its entirety, to participate in behavioral therapy and not repeat such
11 conduct in the future “mindful of the potential threat any repetition of her conduct
12 poses to public confidence, integrity and impartiality of the judiciary and
13 administration of justice.” The Respondent has violated the requirement of “not
14 repeating such conduct in the future”. Respondent’s failure to treat litigants with
15 dignity, patience, and with courtesy has diminished public confidence in the demeanor
16 of some of the judiciary.

17
18 **M. Whether the judge cooperated with the Commission investigation and**
19 **proceeding.**

20 The Respondent cooperated with the Commission in the investigation and
21 proceeding.

22
23 **N. Additional factors the CJC believes are relevant.**

24 The Commission acknowledges that judicial duties are challenging, and for that
25 reason not every transgression requires disciplinary action. But where the misconduct
26 of a judge becomes routine even in a high volume calendar and court then it is
27 incumbent upon the Commission to sanction.

28 The Commission is most distressed by the Respondent repeating some behavior
29 that was the subject of a previous discipline. Before her 2005 discipline, the
30

1 Respondent unilaterally sought professional assistance to modify or at least monitor her
2 behavior. Unfortunately the Respondent has continued some of her previous behavior.

3 Considering the evidence, the Commission concludes that the Respondent, on a
4 routine basis as evidenced by four of the hearings, engaged in impatient, discourteous
5 and undignified behavior towards litigants, and others who appeared before her.

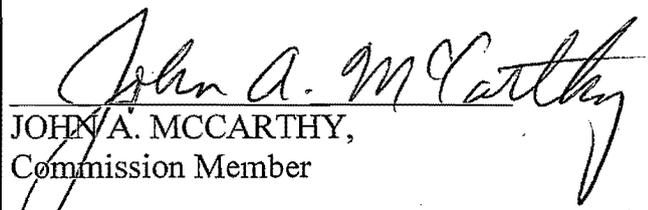
6 Although the Respondent has a duty to maintain order and decorum in her courtroom
7 and should require that litigants, lawyers and staff maintain courtesy and dignity, there
8 was no evidence that any of the litigants, attorneys or court staff were impolite, abusive
9 or out of order in referencing or directing their attention to the Respondent. Some may
10 have taken non tenable positions or made unreasonable requests or needed some
11 appropriate judicial behavior modification comments. Although the primary duty of a
12 judge is to hear and decide all proceedings fairly, and to allow every person who is
13 legally interested in the proceeding the right to be heard in accordance with the law,
14 this obligation is not inconsistent with treating those who come before the trier of fact
15 in a professional, courteous and dignified manner while making tough decisions.

16 17 **CONCLUSION**

18 Based upon the Respondent's (1) pattern of conduct and; (2) failure to fully
19 modify her conduct despite her earlier acknowledgement of unprofessional behavior
20 and her recognition that her behavior towards litigants needed to be modified; I would
21 have the Commission on Judicial Conduct censure Respondent and not recommend to
22 the Washington Supreme Court that the Respondent be suspended. It is the
23 Commission's opinion that further behavioral therapy or counseling will be of
24 assistance but will require the Respondent's full recognition that her tone and style as
25 described above do not meet the high standard of judicial demeanor required. She has
26 so many great judicial qualities and has served the judiciary so well that it would
27 incumbent for her to acknowledge her demeanor forthwith and change to a courteous,
28 patient, and dignified level. The public deserves no less. Failure to fully modify her
29 demeanor should result in substantial suspension or removal in the future if she does
30 not comply.

1 Respondent shall submit a counseling plan to address the demeanor issues
2 identified herein. The plan should be submitted within 30 days of final review of this
3 decision and recommendation to the Supreme Court if adopted as the decision in this
4 case.

5
6 DATED this 19TH day of March 2009.

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10 JOHN A. MCCARTHY,
11 Commission Member
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