Presiding Officer: Michael J. Pontarolo

COMMISSION ON JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF WASHINGTON

In re the matter of

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The Honorable Judith R. Eiler Judge, King County District Court CJC No. 5198-F-136

DISCIPLINARY COUNSEL'S RESPONSE TO RESPONDENT'S MOTION FOR RECONSIDERATION

I. INTRODUCTION

A Hearing Panel of the Commission on Judicial Conduct heard and considered testimony and argument in this matter over the course of four days in November 2008. Following deliberation, the panel issued its decision on April 10, 2009. Respondent now asks the panel to reconsider its decision recommending that Respondent be suspended without pay for ninety days. Respondent's request is entirely inappropriate given the Commission's findings. Accordingly, Respondent's motion should be denied.

II. STATEMENT OF FACTS

Disciplinary Counsel incorporates the Findings of Fact from the Commission Decision. Respondent's motion does not dispute any of those facts. Accordingly, the Commission's Findings of Fact should be viewed as undisputed for purposes of this motion.

DISCIPLINARY COUNSEL'S RESPONSE TO RESPONDENT'S MOTION FOR RECONSIDERATION - 1 CORR CRONIN MICHELSON BAUMGARDNER & PREECE LLP 1001 Fourth Avenue, Suite 3900 Seattle, Washington 98154-1051 Tel (206) 625-8600 Fax (206) 625-0900

III. STATEMENT OF ISSUES

1. Does Respondent's Motion for Reconsideration meet the minimum requirements of CJCRP 24(e) which require specific citations to the record and to legal authorities?

2. Does Respondent's Motion for Reconsideration offer any basis for modifying the Commission Decision in any way?

IV. LEGAL ARGUMENT

A. Respondent's Motion for Reconsideration Is Procedurally Defective.

CJCRP 24(e) governs motions for reconsideration and states in part: "A motion for reconsideration, if filed, shall be specific and detailed, with appropriate citations to the record and legal authority."

Respondent does not offer specifics or details, nor does she cite to any part of the record or to any legal authority, to support her motion. The motion simply asks for a reversal of a decision. It should be denied for that reason alone.

B. Respondent Continues to Misconstrue the Evidence.

As she did during the hearing, Respondent misconstrues the evidence in order to minimize and blame others for her misbehavior. The Hearing Panel is aware of the evidence in this matter and will recognize the inaccuracies in Respondent's motion. For instance, her claim that the "evidence was heavily biased, and primarily from former litigants who had violated the law, did not understand the pace of district court, and were unhappy with the outcome of their case" is not support by the record or the Commission's findings. *See* Motion at 2. Those witnesses who were litigants before Respondent described being aggrieved by the manner in which they were treated, not by the outcome of their case(s). Some of the witnesses who testified had even received the relief they were seeking from Respondent. *See e.g.*, testimony of Patricia Freeman in *Redmond Plumbing v. Freeman*. Other witnesses, like the court clerks, had no interest in the outcome of any matter before the

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Respondent. In fact, the clerks both testified that they liked Respondent personally, confirming a complete lack of personal bias against her. The reality is that Respondent failed to show that any of these witnesses were biased against her for any reason, other than her treatment of persons appearing in her courtroom.

Respondent Previously Stipulated That Conduct of This Nature Violated the Code of Judicial Conduct.

Respondent's current reading of the Code fails to acknowledge or address a key consideration affecting the level of appropriate sanction in this matter: she had previously stipulated that conduct of this nature violated the Code. As the Commission Decision points out in its Decision, Respondent had previously agreed that intimidating and demeaning behavior cited in CJC No. 4148-F-116 violated Canons 1, 2(A), 3(A)(1), 3(A)(3) and 3(A)(4) of the Code. Commission Decision at 2. She agreed in the prior matter that she had abused her authority and undermined the public confidence in the judiciary. *Id.* She promised not to engage in that type of behavior again. *Id.*

D. Respondent's Proposed Sanctions Are Not Reasonable.

During the hearing, the Panel deserved to hear some credible reassurance that Respondent had truly learned her lesson and would not engage in this type of misconduct again. However, Respondent offered no apologies and no reassurances of any kind. Instead, Respondent minimized her conduct and mischaracterized virtually every fact in an effort to avoid the consequences of her actions. The conclusion was – and remains – unmistakable: Respondent has no intention to meaningfully change her abusive judicial approach.

Respondent suggests she be put on three months' paid vacation (i.e., paid suspension) as "punishment" for her misconduct. The fact that Respondent would even suggest such a thing raises serious concerns about her view of the Commission's Decision and its affect on her future conduct.

DISCIPLINARY COUNSEL'S RESPONSE TO RESPONDENT'S MOTION FOR RECONSIDERATION - 3

CORR CRONIN MICHELSON BAUMGARDNER & PREECE LLP 1001 Fourth Avenue, Suite 3900 Seattle, Washington 98154-1051 Tel (206) 625-8600 Fax (206) 625-0900 Respondent's motion to reconsider and proposed alternative sanctions should be rejected. Respectfully submitted this 7th day of May, 2009.

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William H. Walsh, WSBA No. 21911 Disciplinary Counsel

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DECLARATION OF SERVICE 1 The undersigned declares as follows: 2 I am employed at the Corr Cronin Michelson Baumgardner & Preece LLP, law firm 1. 3 of Disciplinary Counsel, William H. Walsh. 4 On May 7, 2009, I caused a true and correct copy of the foregoing document to be 2. 5 served on the attorney of record for Respondent herein by the method indicated to the following: 6 7 Ms. Anne M. Bremner Stafford Frey Cooper 8 601 Union St., Ste 3100 Seattle, WA 98101-1374 9 Via Hand Delivery 10 Additionally on this day, I caused a true and correct copy of the foregoing Ż. 11 document to be served on the Commission on Judicial Conduct by the method indicated: 12 Ms. Judy Curler 13 Commission on Judicial Conduct State of Washington 14 P.O. Box 1817 15 Olympia, WA 98507 16 Via E-Mail 17 I declare under penalty of perjury under the laws of the State of Washington that the 18 foregoing is true and correct. 19 DATED this 7th day of May, 2009 at Seattle, Washington. 20 21 Donna Patterson 22 23 24 25 **CORR CRONIN MICHELSON** DISCIPLINARY COUNSEL'S RESPONSE TO RESPONDENT'S BAUMGARDNER & PREECE LLP 1001 Fourth Avenue, Suite 3900 **MOTION FOR RECONSIDERATION - 5** Seattle, Washington 98154-1051 Tel (206) 625-8600 Fax (206) 625-0900