

BEFORE THE STATE OF WASHINGTON
COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of

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

Respondent.

CJC No. 5198-F-136

Minority Opinion of Commission
Member – John McCarthy

I dissent to the Majority Opinion and submit the following Minority Opinion:

The evidence presented at the hearing does not establish or attempt to establish that Judge Eiler was unfair, was partial or did not make the right decisions. In fact, her decisions are acknowledged by all to be fair, impartial and factually and legally correct.

This case is about how she delivers justice and communicates with litigants in a fast paced high volume court with limited time to listen to people, decipher the evidence and make a correct decision in small claims and traffic cases with a couple of minutes to hear each case.

This case is about her tone and style in getting a lot of people through the pro se small claims and traffic cases in an efficient manner demanded by these dockets.

The majority of evidence presented was short sound clips and sound bites of only her without full transcripts of many of the hearings. She is loud in the clips. Her tone is harsh. The microphone is only in front of her in most hearings. Unfortunately there is not a complete transcript, audio or video of most of the hearings which would put in context the whole interplay between the judge and

the litigants. A review of the transcripts that are available reveals that very few of the actual spoken words are offensive in and of themselves.

Often, in a full docket case, a judge is educating people on one case how to proceed but the judge's comments are intended to be instructional for others on the same docket. The overall context of how she communicates and is received by parties is lacking in many hearings because of gaps in the evidence. Most of the complaints cited in the charge were not brought by the litigants but by others such as court employees or commission investigators who were listening to tapes.

Disciplinary counsel and witnesses for the Commission have described her tone, language and demeanor as "interrupting, angry, disdainful, condescending, sarcastic, rude, mean, impatient, undignified, intimidating, discourteous, belittling, demeaning and humiliating", several adjectives, all of which probably fall within Canon 3(A)(3) which states that "Judges should be patient, dignified and courteous ..."

Respondent's counsel, as well as witnesses for her, including attorneys who regularly practice in her court, and an employee of the court referred to her as "efficient, tough, strong, crisp, no nonsense, brisk but fair, straight shooter, stern". As is the case with descriptions by complaining witnesses, most of these are opinions.

Respondent argued that the Canon 3(A)(3) "should" language does not make it a mandatory required rule. I concur in the opinion of the expert witness for the respondent, Judge Robert McBeth. He opined that based on previous rulings of the Washington State Supreme Court, even though Canon 3(A)(3) uses the term "should", there is a requirement for appropriate demeanor which is mandatory, more than aspirational or permissive. I concur that the primary issue in this matter

is whether the inappropriate demeanor line of Canon 3(A)(3) was crossed in these specific hearings charged by the Commission.

As to the separate alleged Canon violation (in Count One) of Canon 3(A)(4) which provides “Judges should accord to every person who is legally interested in a proceeding, or the person’s lawyer, full right to be heard according to the law....”, there is not clear, cogent and convincing evidence that this Canon was violated as to any of the hearings alleged in the Statement of Charges. Full right to be heard is not unlimited particularly in a fast paced small claims or traffic docket. None of the litigants who testified presented any evidence at the Commission hearing that was not presented at their respective trial or hearing. In many charged cases, Judge Eiler gave parties more time than normal, sometimes two hours in a single small claim case, when she had 12 such cases scheduled in a half day docket yet no new evidence was presented that was not previously advanced at the hearing.

Many witnesses did not like the decision in their case, or the fact that a traffic infraction was found to have been committed or that they had to pay a fine or that their claims were reduced or dismissed. Many wanted the judge fully vested in their feelings about their case. Since there are not full transcripts we do not know all the evidence considered by Judge Eiler in several of these cases.

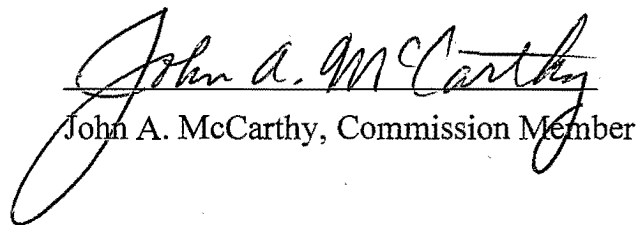
I do believe however that Judge Eiler sounded loud and intimidating in her tone and style and, interrupted several witnesses, more than an appropriate number of times. I believe however that the interruptions were a demeanor issue as opposed to a violation of Canon 3(A)(4) which requires a “full right to be heard”.

As to the separate allegations (of Count One) that Canon 1(A) was also violated which requires a “high standard of judicial conduct so that the integrity and independence of the judiciary will be preserved” and that Canon 2(A) was

violated which requires "Judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary". I submit that violations of these Canons can not be found. There is no evidence that Judge Eiler was lacking in integrity, independence or impartiality which are the principles of these Canons. Unless the court finds that a violation of another Canon automatically results in a finding that Canons 1(A) or 2(A) were violated, and I would assert that this is not the case under the current Canons, no one has challenged her integrity, independence or impartiality; they object to her demeanor and manner.

I concur with the full Commission's decision that Count Two was not established by clear, cogent and convincing evidence.

I attach specific findings of fact and conclusions of law discussing the specific evidence of court hearings cited as examples in the charging document. I focus on the specific evidence as it relates to Canon 3(A)(3) -Adjudicative Responsibility- and whether Judge Eiler crossed and violated that mandatory line which requires her to be patient, dignified and courteous. My ultimate finding is that Canon 3(A)(3) was violated as to some hearings, that there is a pattern of this conduct and that the sanction should be Censure, primarily because similar conduct has resulted in prior discipline. I further recommend that no suspension be imposed because of the factors to be considered and that remedial sanctions can appropriately be imposed.


John A. McCarthy, Commission Member