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Presiding Officer: Michael J. Pontarolo

FILED
APR 24 2009
COMMISSION ON JUDICIAL CONDUCT

**BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON**

In re Matter of

The Honorable Judith Eiler
Judge, King County District Court

CJC NO. 5198-F-136

**MOTION TO RECONSIDER
MAJORITY COMMISSION DECISION**

I. Introduction and Relief Requested

Respondent Judith Eiler ("Judge Eiler") requests the Commission on Judicial Conduct ("the Commission") reconsider its Commission Decision, issued on April 10 2009, in which it found Judge Eiler in violation of Canons 1, 2(A), 3(A)(3), and 3(A)(4) of the Code of Judicial Conduct ("CJC").¹ As a result of the Commission's decision, it will recommend to the Washington Supreme Court that Judge Eiler be censured and suspended for 90 days without pay. The Commission concluded that Judge Eiler's demeanor and behavior adversely impacted the integrity of the judiciary. However, it is also readily acknowledged that Judge Eiler's decisions were at all times fair, impartial,

¹ Count One of the Statement of Charges serves as the basis for this Motion for Reconsideration. Reconsideration is not sought for Count Two.

1 and based on proper factual and legal foundations. As it stands, the recommended
2 punishment is disproportionally severe. Therefore, the Commission is requested to
3 withdraw its recommendation of censure and suspension without pay, and instead issue
4 only the sanction of censure. In the alternative, the Commission is requested to
5 recommend the 90-day suspension be served with pay. A punishment of reduced
6 severity is better proportioned to the violations found by the Commission, and will
7 nevertheless further the goals of adequately enforcing the Code of Judicial Conduct.

8 II. Argument and Authority

9 During the Commission hearing of November 18-21 2008, a variety of evidence
10 was presented both for and against Judge Eiler. Evidence from former litigants, court
11 personnel, and attorneys purportedly demonstrated Judge Eiler's improper demeanor
12 and behavior while in the courtroom. This evidence consisted of audiotapes,
13 transcripts, and witness testimony. At most, this evidence was of limited context,
14 suggesting that Judge Eiler's demeanor and behavior occasionally rose to a level the
15 Commission finds inappropriate. At worst, this evidence was heavily biased, and
16 primarily from former litigants who had violated the law, did not understand the pace of
17 district court, and were unhappy with the outcome of their case.² In contrast, a variety
18 of judges and attorneys, both active and retired, testified on behalf of Judge Eiler,
19 demonstrating she is fair, efficient, and compassionate. These witnesses had no motive
20 or bias, and based their opinions on years of experience with Judge Eiler and with the
21 legal system. In addition, Judge Eiler personally testified, and either refuted the

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23 ² Many litigants from Judge Eiler's courtroom were repeat offenders with a history of multiple infractions.

1 allegations against her or acknowledged where modifications to her behavior were
2 necessary. Judge Eiler also described the negative media publicity she received as a
3 result of the charges against her, and that her position teaching at Seattle University
4 School of Law, a paid position, had been terminated.

5 In its decision, the Commission determined by clear, cogent, and convincing
6 evidence that, under Count One of the Statement of Charges, Judge Eiler violated
7 Canons 1, 2(A), 3(A)(3), and 3(A)(4) of the CJC. Canon 1 demands judges to "uphold
8 the integrity and independence of the judiciary." No evidence presented against Judge
9 Eiler suggested she exhibited bias in her rulings, or decided cases on improper factual
10 or legal grounds. Canon 2(A) demands judges to "respect and comply with the law" in
11 furthering the goals of judicial integrity and impartiality. No evidence presented against
12 Judge Eiler suggested she failed to comply with the laws of Washington. Canon 3(A)(4)
13 demands judges provide a "full right to be heard according to the law" to those with a
14 legal interest in a proceeding. No evidence was presented to suggest Judge Eiler ever
15 refused a litigant an opportunity to be heard. In any district court, in front of any judge,
16 litigants will complain of not being afforded a full opportunity to tell their story. To punish
17 Judge Eiler on this basis alone is unreasonable.

18 The remaining Canon, 3(A)(3), demands judges to be "patient, dignified, and
19 courteous to litigants, witnesses, lawyers, and others within judges deal in the official
20 capacity." Whether this Canon was violated was seriously contested by a multitude of
21 evidence and witnesses. As Commission Member John McCarthy states in his Minority
22 Opinion, the case against Judge Eiler is a demeanor issue: "This case is about [Judge
23 Eiler's] tone and style in getting a lot of people through the *pro se* small claims and

1 traffic cases in an efficient manner demanded by these dockets." It is not disputed that
2 all of Judge Eiler's decisions have been fair, impartial, and factually and legally correct.
3 As a result of the charges brought against her, Judge Eiler has already been subject to
4 harsh media publicity, in addition to losing her paid teaching position at Seattle
5 University School of Law. A censure and suspension of 90 days, without pay, is
6 disproportionate to the violations found by the Commission.

7 **III. Conclusion**

8 Based on the foregoing argument and authority, the Commission is respectfully
9 requested to reconsider its recommendation to the Supreme Court, and instead
10 recommend only a sanction of censure. In the alternative, the Commission is requested
11 to recommend the same sanction of censure and 90-day suspension, but with pay.
12 A punishment of reduced severity is better proportioned to the violations found by the
13 Commission, and will still further the goals of adequately enforcing the Code of Judicial
14 Conduct.

15 DATED this 24th day of April, 2009.

16 STAFFORD FREY COOPER

17 

18 By: _____

19 Anne M. Bremner, WSBA #13269
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22 Attorneys for Respondent Hon. Judith Eiler
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Certificate of Service

The undersigned certifies under the penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of this document entitled MOTION TO RECONSIDER on the following individual(s):

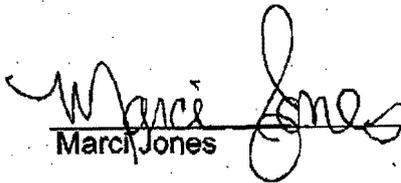
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- Via Messenger

DATED this 24th day of April, 2009, at Seattle, Washington.



Marci Jones