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

In the Matter of:)
The Honorable Debbie Mendoza,)
Judge of the Zillah Municipal Court)

CJC No. 5422-F-140

**STIPULATION, AGREEMENT
AND ORDER OF REPRIMAND**

The Commission on Judicial Conduct and the Honorable Debbie Mendoza, Judge of the Zillah Municipal Court, 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 approved by the Washington Commission on Judicial Conduct.

I. STIPULATED FACTS

A. Judge Debbie Mendoza (Respondent) is now, and was at all times referred to in this document, the Judge of the Zillah Municipal Court in Yakima County.

Respondent has served as judge for that court since 1995. The Zillah Municipal Court is a part-time court which operates calendars twice monthly. Respondent is a part-time, non-lawyer judge and the only judicial officer serving the Zillah Municipal Court.

B. Upon receiving a complaint concerning Respondent's arraignment practices, the Commission on Judicial Conduct conducted an independent investigation and, in August 2008, commenced initial proceedings by contacting Respondent and serving her with a Statement of Allegations. After reviewing the Statement of Allegations and the information supporting the allegations therein, Respondent and the Commission agree to the following.

C. Prior to being contacted by the Commission, Respondent failed to properly

1 advise criminal defendants of their constitutional and procedural rights, including the
2 right to counsel, at arraignment and probation review hearings; failed to properly
3 accept guilty pleas in accordance with court rules; failed to record all hearings and
4 failed to use qualified interpreters in her court.

5 1. Until August 2008, Respondent's standard out of custody arraignment
6 practice was to provide each defendant appearing for arraignment a written form
7 entitled "Defendant's Rights, Plea, Request For Jury/Non-Jury Trial, and for An
8 Attorney." This form (attached as Exhibit 1) purported to identify a criminal
9 defendant's fundamental rights, however, it was not a full advisement and was
10 confusing. When the clerk called an individual defendant's case, that defendant
11 submitted the signed form to the court for entry into the court file. Respondent would
12 ask each defendant if they understood the form and most often asked whether they
13 had any questions. The vast majority of defendants in that court appear without
14 counsel. There was no inquiry, however, into whether the defendant knew of and
15 wished to waive their right to counsel at that hearing and no colloquy was entered into
16 regarding the elements and penalties of the crime charged, nor the fundamental
17 rights being waived.

18 2. Many defendants indicated on that one page form that they wished to
19 enter a guilty plea. Many times, with no further paperwork, and few, if any, additional
20 questions, Respondent would accept the plea, find the defendant guilty and impose
21 sentence. There was no statement on the record that the defendant knowingly,
22 intelligently and voluntarily waived his or her rights (and no advisements given nor
23 inquiry made to make such a determination), no finding of facts sufficient to accept
24 the plea, and no opportunity for allocution.

25 3. In March of 2003 the court began using the standard guilty plea form
26 promulgated by the Administrative Office of the Courts. Still, when accepting pleas,
27 Respondent made little inquiry of unrepresented defendants and no further
28 advisements of rights. Respondent was inconsistent in making a finding on the

1 record that the defendants knowingly, intelligently and voluntarily waived their rights,
2 and often made no finding of facts sufficient to accept the plea, and gave no
3 opportunity for allocution.

4 4. In probation review hearings, until being contacted by the Commission,
5 Respondent routinely failed to advise defendants of their right to be represented by
6 counsel during the probation review proceeding, nor did she advise them of their right
7 to contest any allegation of noncompliance at a review hearing.

8 5. Most of the Zillah Municipal Court's in-custody arraignments and
9 hearings are conducted telephonically and prior to August 2008, Respondent was not
10 recording these hearings, despite the plain statutory obligation that they must be
11 recorded.

12 6. Prior to February, 2008, Respondent employed uncertified, non-qualified
13 interpreters. During the in-custody telephonic arraignments for non-English speaking
14 defendants, Respondent often used bilingual jail staff, which presented a conflict of
15 interest between law enforcement and the defendants' right to neutral interpreters to
16 understand the court process.

17 II. AGREEMENT

18 A. Respondent's Conduct Violated the Code of Judicial Conduct.

19 1. Based upon the foregoing stipulated facts, Respondent agrees she
20 violated Canons 1, 2(A) and 3(A)(1) of the Washington State Code of Judicial
21 Conduct. Canons 1 and 2(A) of the Code require judges to uphold the integrity of the
22 judiciary by avoiding impropriety and the appearance of impropriety and by acting at
23 all times in a manner that promotes public confidence in the integrity and impartiality
24 of the judiciary. Canon 3(A)(1) of the Code requires judges to be faithful to the law
25 and maintain professional competence in it.

26 2. Respondent agrees she violated the above canons by engaging in a
27 pattern and practice of failing to properly advise criminal defendants of their
28 constitutional rights at arraignment and probation review hearings; failing to conduct

1 guilty pleas in accordance with the rules of court and settled case law; failing to record
2 all hearings; and failing to properly qualify interpreters.

3 3. Respondent's advisement of rights practices were deficient.

4 Respondent made no individual inquiry or verbal advisement of rights prior to
5 asking each defendant to enter a plea. CrRLJ 4.1(a)(3) requires that, when a
6 defendant appears without a lawyer, "the court shall advise the defendant on the
7 record: (i) of the right to trial by jury if applicable; and (ii) of the right to be represented
8 by a lawyer at arraignment and to have an appointed lawyer for arraignment if the
9 defendant cannot afford one." Although defendants appearing before Respondent for
10 arraignment were provided written information about their constitutional rights, this
11 method of advisement, by itself, was deficient, because Respondent did not always
12 ascertain whether the defendants had actually read or understood the written
13 advisement. Moreover, the written advisement was confusing and incomplete.

14 In probation modification or revocation hearings, criminal defendants have the
15 right to be represented by counsel, see CrRLJ 7.6(b), as well as the right to contest
16 at the hearing any allegation of noncompliance. Respondent did not properly advise
17 defendants of these rights, nor determine whether each defendant wished to waive
18 their right to counsel before holding a revocation proceeding.

19 4. Respondent's change of plea practices were deficient.

20 Respondent did not make inquiry to determine, nor make a finding on the
21 record, that each guilty plea was knowingly, voluntarily and intelligently made and did
22 not find, on the record, facts sufficient to support the plea, despite the requirements
23 in CrRLJ 4.2(d).¹ Respondent did not obtain proper waivers of counsel before
24 accepting a plea; did not make full advisements regarding rights waived nor the direct
25 consequences of each plea. Respondent did not fully advise defendants of the
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27 ¹ CrRLJ 4.2(d) Voluntariness. The court shall not accept a plea of guilty without first determining
28 that it is made voluntarily, competently, and with an understanding of the nature of the charge and the
consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that
there is a factual basis for the plea.

1 maximum penalty, nor did she advise of mandatory minimum penalties. Furthermore,
2 Respondent did not inquire whether defendants wished to make a statement or
3 otherwise present information to the court prior to imposing sentence, as required by
4 CrRLJ 7.2(c) (the right of allocution).

5 Judges have a basic responsibility to ensure that criminal defendants are
6 properly advised of their constitutional and due process rights so that they are able to
7 make informed decisions regarding their case. This basic duty is dictated by the
8 constitutional requirement that a criminal defendant's waiver of fundamental rights,
9 such as the right to counsel or to a jury trial, and/or the decision to enter a guilty plea
10 may be legally recognized only if done knowingly, intelligently and voluntarily. In
11 addition, judges have a duty to ensure that guilty pleas are constitutionally valid – that
12 they are made voluntarily, competently and with an understanding of the nature of the
13 charge and the consequences of the plea. The judicial procedures designed to
14 safeguard a criminal defendant's fundamental rights, and the corresponding validity
15 of a guilty plea, are clearly set forth in the court rules, statutes and case law and
16 highlighted by this Commission's prior decisions. In addition, the Criminal Benchbook
17 for Courts of Limited Jurisdiction provides guidance on how to implement the law and
18 observe these rights.

19 5. Respondent is required to electronically record all proceedings.

20 ARLJ 13 requires that courts of limited jurisdiction record all proceedings.² This
21 rule, effective in 2002, eliminated the exceptions which had previously exempted Zillah
22 Municipal Court from the requirement to record all proceedings. While most hearings
23 in Zillah Municipal Court were recorded in the time period at issue in this case,
24 telephonic in-custody hearings were not.

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28 ARLJ 13: LIMITED JURISDICTION COURTS ARE REQUIRED TO RECORD ALL PROCEEDINGS
ELECTRONICALLY

a) Generally. All limited jurisdiction courts shall make an electronic record of all proceedings
and retain the record for at least as long as the record retention schedule dictates.

[Adopted effective October 1, 2002.]

1 6. Respondent utilized unqualified interpreters.

2 While the Zillah Municipal Court currently employs a certified/properly qualified
3 Spanish interpreter, the court previously used non-certified interpreters without
4 determining that doing so was permitted as required by RCW 2.43.030, and without
5 establishing that the proposed interpreter was qualified and disinterested.

6 **B. Imposition of Sanction**

7 1. The sanction imposed by the Commission must be commensurate to the
8 level of Respondent's culpability, sufficient to restore and maintain the public's
9 confidence in the integrity of the judiciary, and sufficient to deter similar acts of
10 misconduct in the future.

11 2. In determining the appropriate level of discipline to impose, the
12 Commission considers the factors set out in Rule 6(c) of its Rules of Procedure.

13 **a. Characteristics of Misconduct.**

14 The violations described above were not isolated, but rather constituted
15 a regular practice that Respondent had followed for years, as such, the acts of
16 misconduct were systemic and routine. In every case, the misconduct occurred in the
17 courtroom, in the judge's official capacity. As such, the violations are extremely
18 serious, going to the core of the judge's constitutional responsibility.

19 The nature of injury from Respondent's misconduct concerns the
20 deprivation of an accused person's fundamental due process rights as well as guilty
21 plea hearings that are constitutionally infirm. It is impossible to determine the extent
22 of any injury to any particular individual, or if any injury specifically took place. While
23 there is no indication that Respondent actively denied access to counsel, failure to
24 make the proper advisements may well have led multiple defendants to proceed alone,
25 foregoing defenses or presentation of mitigating factors. The effect of this misconduct
26 was to potentially deprive defendants of their constitutional rights. The above two
27 considerations are serious aggravating factors.

28 In mitigation, there is no evidence Respondent flagrantly or intentionally

1 violated the oath of office or exploited her position for personal desires. On the
2 contrary, Respondent appears to make her best efforts to serve in the role of judge in
3 a remote community with scarce resources. It appears that her deficiencies are borne
4 from insufficient judicial training, rather than any lack of will to be conscientious.

5 **b. Service and Demeanor of the Judge**

6 As soon as the Commission brought this matter to Respondent's
7 attention, she acknowledged the deficiencies in her standard practices. In fact, prior
8 to being contacted by the Commission, Respondent took steps to improve her
9 procedures. For example, in March of 2003, Respondent began utilizing standard
10 guilty plea forms. Also prior to contact from the Commission, Respondent created a
11 video, for use at all hearings, to advise defendants of their rights. This video is played
12 in English and Spanish. While the Commission does not specifically find that the video
13 cured the deficiencies it later raised with Respondent, the Commission acknowledges
14 the demonstration of good faith effort that it represents. Respondent has articulated
15 a sincere desire to conduct her court in compliance with constitutional requirements,
16 court rules and caselaw and the changes made prior to Commission contact evidence
17 such a desire. Respondent has been familiarizing herself with the contents of the
18 Criminal Procedures Benchbook, which she acknowledges is a good source of
19 reference for all judges.

20 Respondent has fully cooperated with the Commission in this matter, has
21 served her community as a part-time judge for 13 years and has had no prior
22 disciplinary action.

23 3. Based upon the stipulated facts, upon consideration and balancing of the
24 above factors, Respondent and the Commission agree that Respondent's stipulated
25 misconduct shall be sanctioned by the imposition of a reprimand. A "reprimand" is a
26 written action of the Commission that requires a respondent to appear personally
27 before the Commission and that finds that the conduct of the respondent is a violation
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1 of the Code of Judicial Conduct, but does not require censure or a recommendation
2 to the supreme court that the respondent be suspended or removed. A reprimand
3 shall include a requirement that the respondent follow a specified corrective course of
4 action. Reprimand is the intermediate level of disciplinary action available to the
5 Commission.

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

9 5. Respondent agrees she will promptly read and familiarize herself with the
10 Code of Judicial Conduct, the Criminal Rules for Courts of Limited Jurisdiction and the
11 Criminal Procedure Benchbook for Courts of Limited Jurisdiction in their entirety. In
12 this agreed resolution with the Commission, in aid of her further training and to avoid
13 similar problems, Respondent agrees she will utilize the resources in the Benchbook
14 to create scripts for use on the bench at arraignment, for waiver of counsel, at
15 probation review hearings and during change of plea proceedings.

16 6. Respondent agrees that, for one year following entry of this stipulation,
17 she will provide the Commission, on a quarterly basis, with audio or video recordings
18 of each court calendar.

19 7. Respondent agrees she will complete a course on criminal procedure at
20 her expense or at the expense of her appointing jurisdiction, approved in advance by
21 the Commission chair or the chair's designee, and provide proof of completion of the
22 course within one year of the date this stipulation is entered.

23
24 Standard Additional Terms and Conditions

25 8. Respondent agrees that by entering into this stipulation and agreement,
26 she waives her procedural rights and appeal rights in this proceeding pursuant to the
27 Commission on Judicial Conduct Rules of Procedure and Article IV, Section 31 of the
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1 Washington State Constitution.

2 9. Respondent affirms she has consulted with or has had an opportunity to
3 consult with counsel prior to entering into this stipulation.

4 10. Respondent further agrees that she will not retaliate against any person
5 known or suspected to have cooperated with the Commission, or otherwise associated
6 with this matter.

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9 Debbie Mendoza March 12, 2009
10 Hon. Debbie Mendoza Date

11 J. Reiko Callner March 17, 2009
12 J. Reiko Callner Date
13 Executive Director
14 Commission on Judicial Conduct

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ORDER OF REPRIMAND

17 Based on the above Stipulation and Agreement, and pursuant to the authority
18 contained in Article IV, Section 31 of the Washington State Constitution, the
19 Commission on Judicial Conduct hereby orders Respondent, Judge Debbie Mendoza,
20 REPRIMANDED for the above set forth violations of the Code of Judicial Conduct.
21 Respondent shall not engage in such conduct in the future and shall fulfill all of the
22 terms of the Stipulation and Agreement as set forth therein.

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DATED this _____ day of _____, 2009.

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Wanda Briggs, Chair
Commission on Judicial Conduct

ZILLAH MUNICIPAL COURT

City of Zillah
Vs.

Defendant's Rights, Plea, Request
For Jury/Non-Jury Trial, and for
An Attorney.

No. _____

Charge 1) _____

Charge 2) _____

I understand the charge against me and have received a copy of the Complaint.

I understand that I am presumed innocent and that if I plead "not guilty", I could not be found Guilty unless evidence at my trial proved my guilt beyond a reasonable doubt.

I understand that I can be sentenced to the maximum jail term and fines provided by law. The Maximum penalty is [] 365 days and \$5000.00; [] 90 days and \$1000.00; [] 0 days and \$1000.00.

My plea of guilty is a knowing and intelligent waiver of my right to a trial by a judge or jury, Of my right to remain silent, my right to face my accuser and witnesses against me, of an appeal, And of my right to an attorney, even at public expense unless I am already represented by one.

This plea is made voluntarily and with full knowledge of the consequences, including (for Certain offenses) the loss of my driving privilege and in some cases Habitual Traffic Offender Status. It may be grounds to revoke any parole or probation, if I am not a United States Citizen, a Guilty plea may be grounds for deportation, exclusion from admission, or denial of naturalization And privileges under the laws of the United States. I understand that I may be required to pay Restitution (damages) for crimes involving personal injury or property damage.

I understand the above and plead GUILTY to the charge.

Defendant

I understand the above and plead NOT GUILTY to the charge.

I want to be represented by: My own attorney
 A court appointed attorney

If you are found guilty of the charge you can be assessed all or part of the court appointed attorney fees.

I want my trial to be: By a jury
 By the judge without a jury
 I am uncertain. I agree that I can be set for a Judge trial unless I advise the Court in writing within 14 days that I want a jury Trial.

Defendant

Dates this _____ day of _____, 20____.

ATTEST: _____
Judge