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COMMISSION ON JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In Re the Matter of,

The Honorable Stephen R. Shelton,
Judge of the Puyallup Municipal Court.

CJC No. 6284-F-148

**ANSWER TO
STATEMENT OF CHARGES**

The Honorable Stephen R. Shelton ("Judge Shelton"), by and through his attorneys of record, Stafford Frey Cooper, P.C. and Anne M. Bremner, answers the Statement of Charges filed by the Commission on Judicial Conduct (the "Commission") as follows:

I. BACKGROUND

1. Answering Paragraph 1, Judge Shelton admits the allegations contained therein.
2. Answering Paragraph 2, Judge Shelton admits the allegations contained therein with the understanding the complaint received by the Commission was made anonymously and the Commission's five-month investigation of him determined the allegation was an isolated event, and there was no indication he intentionally transgressed the Code of Judicial Conduct or that his actions were improperly motivated.

1 judge acted without animus. The Court specifically held that legal error neither willful nor part
2 of a repeated pattern of misconduct is not an appropriate subject for discipline.

3 3. Judge Shelton respectfully requests the Commission review and find that the two
4 judicial conduct commission cases from the State of Washington and the four cases from other
5 states supplied to Judge Shelton as the legal basis for a sanction against him are not only
6 completely dissimilar factually, but evidence exceedingly more egregious conduct than the
7 allegations against him.

8 III. CONDUCT GIVING RISE TO CHARGES

9 This case involved a ten minute in-custody proceeding via video feed with the jail
10 wherein Judge Shelton, the prosecutor, and the alleged female victim ("C.A.") were in open
11 court, and the male defendant and the standby public defender were in the jail. Judge Shelton
12 conducted the arraignment as follows:

- 13 1. After preliminary advisements, Judge Shelton informed the defendant he was
14 charged with "Harassment-Domestic Violence Related" alleging he "verbally
threatened to harm his girlfriend" by striking her with a belt.
- 15 2. The public defender informed Judge Shelton the defendant would stipulate to
16 the police report as the sole evidence in the case and thereby waive his right to
counsel and trial.
- 17 3. Upon Judge Shelton's inquiry whether the defendant understood the rights he
18 was waiving, the defendant replied that his main concern was being released
from jail so he would not lose his job and could continue in school.
- 19 4. As the prosecutor submitted the signed stipulation and the police report to Judge
20 Shelton, the prosecutor directed Judge Shelton's attention to the supplemental
report (the transcript mistakenly stated the clerk submitted the documents).
- 21 5. The general report included the following relevant facts: (1) at about 1:21 a.m.
22 the defendant called the police stating his fiancée had thrown a glass and butter
knife at him; (2) dispatch heard a female yelling in the background about a belt;
23 (3) the defendant told the officers he and C.A. had been arguing and she then
left the residence; (4) the defendant stated he locked himself in the bedroom and

1 C.A. used a butter knife to open the door and threw the knife and a glass at him,
2 and that a fragment of the broken glass cut his hand; (5) C.A. stated the
3 defendant came home intoxicated, that they argued and agreed to end their
4 relationship and she then left the residence to "cool down the argument";
5 (6) when she returned, the defendant had locked himself in the bedroom and she
6 was concerned that he would damage her laptop so she used the knife to unlock
7 the door; and (7) she said he advanced toward her with a belt and threatened to
8 hit her so she threw the glass and knife at him in self defense.

6. Upon review, the officer determined the defendant was the primary aggressor
and arrested him for the threat. The officer then wrote at the end of the report:
"It should be noted that C.A. entered the room of her own free will and
used the knife to bypass the lock. This report will be forwarded to the D.V.
advocate and prosecutor for review of possible charges for C.A." (emphasis
added).

7. Based on this general report, Judge Shelton intended to find sufficient facts to
find the defendant guilty.

8. However, Judge Shelton then reviewed the supplemental report which stated
shortly after the defendant was arrested, C.A. went to the police department and
made a statement which included the following after she had been advised of her
rights: (1) she admitted she lied in the previous statement to PPD officers;
(2) she gained access to the bedroom and spit on the defendant and threw a
glass at him; (3) there was blood on the bed which indicated he had been
cut; (4) when the defendant called the police, she gave false information to
the police because she was "frightened at the time of the incident and felt
she would be arrested;" and (5) she was not trying to protect the defendant
but that she knew it was wrong to lie (emphasis added).

9. At this time, Judge Shelton determined the standby public defender had not been
provided the supplemental report.

After considering the general and supplemental reports, Judge Shelton acted as follows:

1. Pursuant to the general report filed by the responding officers, Judge Shelton
found probable cause for the charge of "Harassment" based C.A.'s statements.

2. Pursuant to the supplemental report which indicated C.A. had lied to the police
to avoid being arrested, Judge Shelton declined to accept the defendant's
stipulation and waiver of counsel and trial.

3. Judge Shelton then requested the prosecutor to review the reports.

1 4. Judge Shelton reduced the "No Bail Domestic Violence" to \$1,000.00 cash or
2 bond and set the case for pre-trial conference.

3 5. Judge Shelton appointed the public defender to represent the defendant.

4 As Judge Shelton was issuing these decisions, C.A. interjected the question, "May I make
5 a comment?" to which Judge Shelton responded, "No, Ma'am. You can have a moment in a
6 minute. Trust me." Then, after a long pause as Judge Shelton considered the supplemental
7 report, wherein C.A. admitted she lied to police, Judge Shelton instructed the bailiff to take C.A.
8 into custody (in taking any individual into custody, it is Judge Shelton's standard procedure to
9 provide the highest level of security for court personnel, the general public, and the individual by
10 securing the person and then explaining the reasons for the detainment to minimize the
11 opportunity for fighting or fleeing). Judge Shelton then proceeded as follows:

12 1. Judge Shelton inquired if anyone else lived with C.A. and the defendant to
13 determine if anyone would be impacted by both she and the defendant being in
14 custody (*i.e.* children).

15 2. Judge Shelton informed C.A. she was being held in contempt of court based on
16 her statement in the supplemental report. Then Judge Shelton read the relevant
17 portion of the supplemental report into the record which stated in part, "I lied
18 and said he had threatened me which is untrue. I want to recant my statement. I
19 was frightened and afraid I would be arrested."

20 3. Judge Shelton imposed a punishment of one day in jail with a release at 9:00
21 a.m. the following day for approximately 17 hours in custody.

22 Judge Shelton believed that at all times he acted in accordance with RCW 7.21.010 in
23 finding that C.A.'s false statement was "intentional" and "contemptuous . . . behavior toward the
24 judge while holding court" which tended to interrupt . . . judicial proceedings" for the following
25 reasons:

26 1. C.A. was present in court and was a material witness in the prosecution.

1 2. C.A.'s admission to lying to police to avoid being arrested was "contemptuous...
2 toward the judge" as Judge Shelton was required to consider such admission
 while in open court to properly arraign the defendant.

3 3. C.A.'s lie to avoid being arrested did "interrupt" the "judicial proceedings"
4 for two alternate reasons:

5 (a) If the first statement was a lie, the defendant would not have been
 arrested and no proceedings against him would have occurred; or

6 (b) If the first statement was a lie to avoid being arrested, then C.A. would
7 have been considered the primary aggressor and she would have been the
 defendant in the arraignment proceedings.

8 Judge Shelton believed he was acting in accordance with RCW 7.21.050, "Sanctions –
9 Summary Imposition – Procedure," by taking C.A. into custody at the "end of the proceeding"
10 for "the purpose of preserving order in the court and protecting the authority and dignity of the
11 court" for two reasons:

12 1. Judge Shelton was concerned the order, authority, and dignity of the court
13 would be diminished if he did not take action in addressing an act of dishonesty
14 which had resulted in the arrest of an arguably innocent individual, or if a
15 potential domestic violence defendant could lie to avoid being arrested. Also,
 Judge Shelton was concerned the order of the court would not be preserved by
 ignoring an act of dishonesty that had such a serious consequence as the arrest
 and possible conviction of another person.

16 2. Judge Shelton also acted to preserve the integrity of the domestic violence laws.
17 Police officers, prosecutors, and judges understand the inherent difficulties in
18 the investigation, prosecution, and decision-making involved in domestic
19 violence cases, including "recanting." However, in this case, Judge Shelton
20 concluded that C.A. did not "recant" in the usual sense, as she simply lied to
21 avoid being arrested. Therefore, Judge Shelton was concerned the court would
22 be seen as simply ignoring the "lie," which would send a message to domestic
23 violence perpetrators and victims, police officers, and prosecutors that the court
 is not able to take definitive action when false statements so decisively impact
 judicial proceedings.

1 After taking C.A. into custody, Judge Shelton believed he acted in accordance with
2 RCW 7.21.050, even though he did not provide her "with an opportunity to speak in mitigation
3 of the contempt" due to the "compelling circumstances" listed below:

- 4 1. If C.A. admitted in open court that she had "lied," it would have placed her in
5 jeopardy of being charged with Domestic Violence Assault in the Fourth Degree
6 and False Statement to a Public Servant.
- 7 2. If C.A. admitted in open court that she had "lied," it would have placed in right
8 to avoid self-incrimination in jeopardy.

9 Judge Shelton also believed he acted in accordance with the RCW 7.21.050 requirement
10 to issue an order reciting "the facts, state the sanctions, imposed, and be signed by the judge and
11 entered on the record" by signing an "Order for Contempt of Court and Imposing Sanctions."
12 Judge Shelton concluded the court docket and the recording of the proceedings provided the
13 necessary recitation of facts and were considered as a part of the Order.

14 Finally, Judge Shelton believed the imposition of one night in jail might forestall or
15 prevent the prosecutor from filing charges against C.A. for the crimes of Domestic Violence
16 Assault in the Fourth Degree and Providing False Information to a Police Officer.

17 In review, Judge Shelton conducted the arraignment proceedings professionally and
18 properly. Judge Shelton:

- 19 1. Acted at all times in a professional and dignified manner with proper decorum.
- 20 2. Treated all persons before the court with respect.
- 21 3. Conducted the arraignment proceedings properly and professionally, and
22 preserved the rights of the defendant in the absence of full disclosure by the
23 prosecutor to the public defender.
4. Made a concerted effort to consider the application of the contempt powers to
C.A.'s admission that she lied to keep from being arrested, and believed he
properly interpreted and applied the contempt powers in accordance with
RCW 7.21.050.

- 1 5. Acted to protect C.A. from self-incrimination.
- 2 6. Insured no children or other persons would be impacted by the punitive action.
- 3 7. Informed C.A. of the reason he was holding her in contempt.
- 4 8. Did not impose an excessive incarceration as a punitive action.
- 5 9. Considered the punitive action might forestall filing of criminal charges against
- 6 C.A. as he was concerned that she might be in a difficult relationship.

7 In summary, Judge Shelton urges the Commission to closely review all the facts in the
8 police reports and his legal analysis as presented above. In this review, Judge Shelton also
9 requests the Commission note that no other violations are alleged, and there is no suggestion that
10 Judge Shelton displayed an animus or bias toward C.A. or had issues with his demeanor. To the
11 contrary, Judge Shelton conducted the proceedings properly and held C.A. in contempt only after
12 he reasonably believed it was warranted under the circumstances.

13 IV. CONCLUSION

14 Judge Shelton respectfully requests the Commission to consider his interpretation and
15 implementation of RCW 7.21 during the arraignment proceedings in the context of all the facts,
16 his professional conduct and deliberative approach, and the stated reasons for his decisions, and
17 find his actions did not violate the stated Judicial Canons:

- 18 1. Canon 1: "maintaining and enforcing high standards of judicial conduct, and
19 shall personally observe those high standards so that the integrity and
independence of the judiciary will be preserved."
- 20 2. Canon 2(A): "respect and comply with the law and should act at all times in
21 a manner that promotes public confidence in the integrity and impartiality of
the judiciary."
- 22 3. Canon 3(A)(1): "be faithful to the law and maintain professional competence
23 in it."

1 4. Canon 3(A)(3): "be patient, dignified and courteous" and to "hear all
2 proceedings fairly and with patience."

3 5. Canon 3(A)(4): "accord to every person who is legally interested in the
4 proceeding . . . full right to be heard according to law."

5 In the alternative, if the Commission finds Judge Shelton improperly interpreted and
6 applied RCW 7.21, he requests the Commission to dismiss these proceedings pursuant to the
7 necessity of maintaining judicial independence as articulated in the ruling by the Alaska
8 Supreme Court, namely that judicial discipline is not warranted for a judge who misuses his
9 contempt powers in an isolated and unintentional manner. Furthermore, dismissal of these
10 proceedings is in harmony with the Commission of Judicial Conduct Preamble, which makes
11 clear that disciplinary action is not warranted for every transgression, especially where such a
12 transgression is inadvertent, unintentional, and based on a reasonable mistake.

13 Finally, in the event the Commission finds Judge Shelton did act in violation of the
14 Canons, Judge Shelton requests the Commission to consider a sanction of Admonishment, which
15 is fair and proportionate when considered in light of all legal authority on point, in addition to an
16 analysis of the CJCRP 6(c) "Deming" Factors:

17 **(1) Characteristics of Misconduct**

18 (A) The alleged misconduct was an isolated incident.

19 (B) The nature, extent, and frequency of the alleged misconduct involved only a single
20 contempt ruling, directed at one individual.

21 (C) The alleged misconduct occurred inside of the courtroom.

22 (D) The alleged misconduct occurred in Judge Shelton's official capacity.

23 (E) Judge Shelton did not flagrantly or intentionally violate his oath of office. Holding
C.A. in contempt was based on his good-faith interpretation of the law. Preventing
C.A. from making a statement was based on Judge Shelton's decision to protect C.A.
from self-incrimination as to possible criminal charges of False Statement and
Domestic Violence Assault in the Fourth Degree.

1 (F) The alleged misconduct did cause injury to C.A, as is the case when any individual is
2 held in contempt. However, Judge Shelton did insure that no other persons would be
injured by the incarceration of C.A. overnight.

3 (G) No evidence suggests Judge Shelton exploited his official capacity to satisfy personal
4 desires. No evidence suggests he acted with bias, prejudice, or hatred. To the
5 contrary, the evidence suggests Judge Shelton took a significant amount of time to
6 weigh his decisions and the applicable law before entering his order. C.A. was held
7 in contempt because Judge Shelton believed she had made a false statement to the
police, resulting in criminal charges against another individual, thereby disrupting
court proceedings. Judge Shelton did not act with animosity, but instead determined
it was his responsibility to maintain the respect for the court and for the judicial
proceedings.

8 (H) The effect Judge Shelton's actions had upon "the integrity and respect for the
9 judiciary" is difficult to ascertain. On one hand, Judge Shelton admits he may have
10 misapplied his contempt powers. On the other hand, he utilized his contempt powers
to sanction an individual who admitted giving a false statement to the police to "avoid
going to jail." This false statement was relied upon by the State to charge the
defendant with domestic violence.

11 **(2) Service and Demeanor of the Judge**

12 (A) Judge Shelton acknowledged and recognized the allegations occurred and has
13 expressed remorse for his actions.

14 (B) Judge Shelton has reviewed applicable law and educated himself to prevent future
incidents.

15 (C) Judge Shelton has served as a judge for over 16 years and has significant experience
and community involvement.

16 (D) There has never been prior disciplinary action against Judge Shelton.

17 (E) Judge Shelton has cooperated with the CJC during the investigation.

18 (F) No ethics advisory committee opinion is at issue, making this final element
19 inapplicable.
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1 DATED this 30th day of December, 2010.

2 STAFFORD FREY COOPER

3 By: /s/ Anne M. Bremner
4 Anne M. Bremner, WSBA #13269
5 Peter A. Altman, WSBA #40578

6 Attorneys for Respondent Stephen R. Shelton
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1 In re Curda, 49 P.3d 255. After a formal hearing, the Commission recommended to the Supreme
2 Court of Alaska that the judge be reprimanded for the clear legal errors committed during the
3 contempt proceedings, which violated serious fundamental procedural rights. Id. At 257. The
4 Supreme Court rejected this recommendation, and found no ethical violations were committed
5 by the judge:

6 Our review of case law from other jurisdictions indicates that courts most often
7 find judicial misconduct where judges have repeatedly or willfully denied
8 individuals their rights.

9 Judge Curda ... committed a single deprivation of an individual's constitutional
10 rights, motivated by good faith concerns for orderly trial proceedings and the
11 affected individual's well-being, in the face of a unique situation for which there
12 was no available legal template.

13 [T]his court is aware of "no contested American case approving the disciplining
14 of a judge for a single incident of good faith legal error when the judge acted
15 without animus."

16 [L]egal error that is neither willful nor part of a repeated pattern of misconduct is
17 not an appropriate subject for discipline. In light of this standard we conclude
18 Judge Curda's treatment of [the victim] is not properly subject to ethical sanction
19 because the errors he made were neither repeated nor willful.

20 Id. at 258, 261 (internal citations omitted); see also In re Quirk, 705 So.2d 172 (La. 1997) (a
21 judge's legal ruling is only grounds for judicial disciplinary sanctions if it is clearly contrary to
22 law and made in bad faith, or part of a routine practice of legal error).

23 The court in In re Curda also expressed serious concern of the danger of having judges
base their legal decisions out of fear of being sanctioned:

Further, judges must be able to rule in accordance with the law which they believe
applies to the case before them, free from extraneous considerations of
punishment or reward. This is the central value of judicial independence. That
value is threatened when a judge confronted with a choice of how to rule—and
judges are confronted with scores of such choices every day—must ask not
"which is the best choice under the law as I understand it," but "which is the
choice least likely to result in judicial discipline?"

1 Id. at 261. In summary, Judge Shelton asks the Commission to find the Alaska Supreme Court
2 cases are directly on point, and that judicial disciplinary sanctions are inappropriate when the use
3 of contempt powers by a judge constitutes an isolated and unintended mistake. Judge Shelton is
4 accused of misusing his contempt powers, despite the misuse being an isolated and unintentional
5 instance of alleged misconduct. Judge Shelton has not routinely nor willfully denied individuals
6 their rights, and no evidence suggests that he acted in bad faith. Without a continuing pattern of
7 misconduct or other evidence of bad faith, ethical sanctions imposed by the Commission are
8 unjustified.

1 APPENDIX B – Response to Authority Provided by the Commission

2 Judge Shelton strongly disagrees with the cases cited by the Commission allegedly
3 supporting the discipline of a reprimand. The cases are not only factually different from the
4 allegations against Judge Shelton, but they evidence far more egregious judicial misconduct. It
5 is noteworthy the cases do not include a single decision establishing a reprimand is the
6 appropriate sanction where a judge stands accused of only an isolated and unintentional abuse of
7 his or her contempt powers.

8 (a) Washington State Cases

9 In re the Matter of Colby, No. 2511 (Washington, 2000). Order of Censure and
10 Acceptance of Resignation. Of all the judicial violations by Judge Colby, of which there were
11 many, only one count has been referenced in addressing Judge Shelton's case. In that count, the
12 Commission found the judge used the contempt power illegally, abrogated the witness's
13 constitutional rights, and displayed intemperate demeanor lacking in judicial propriety which
14 tended to diminish respect for the judiciary. Specifically, the judge:

- 15 1. Without lawful authority, imposed an order against a husband and wife,
16 who were witnesses in a case, prohibiting them from consuming alcohol
and being under the influence of alcohol in the presence of a minor.
- 17 2. Had *ex parte* contact with the defendant, and based on that contact,
18 caused witnesses to appear in court for a hearing without providing
19 notice as to the purpose of the hearing in order to confront them about
20 their consumption of alcohol.
- 21 3. Denied one witness's request for legal counsel.
- 22 4. Apparently, based on the *ex parte* contact, found both witnesses had
23 violated his orders and held each of them in contempt of court and
immediately imposed two days in jail for each witness.
5. Made angry and demeaning comments to the mother when she asked to
be heard in order to make arrangements for children who were expecting

1 her when they returned home from school, thereby indicating he did
2 not consider or at least did not care that the incarceration of the husband
and wife would have a significant impact on the couple's minor children.

3 In summary, the judge's use of his contempt power is completely dissimilar and far more
4 egregious than the allegations against Judge Shelton.

5 In re the Matter of Junke, No. 1137 (Washington, 1993). Order of Reprimand. The
6 judge was reprimanded on the basis of four distinct allegations of misconduct (one of which
7 involved the use of the contempt power): (1) improperly threatening to cancel a public defender
8 contract; (2) holding deputy prosecutor in contempt for refusing to arrest a state trooper;
9 (3) improperly having *ex parte* communication with defendant and improperly conducting an
10 independent investigation; and (4) dismissing a DWI charge *sua sponte* after a disabled
11 defendant could not enter the courtroom.

12 *Count 2*

- 13 1. During a criminal prosecution, the prosecutor "presented an agreement
14 with defense counsel."
15 2. After the judge and prosecutor completed a colloquy regarding the
16 agreement and the reduction of the charge, the judge directed the
prosecutor "to issue a warrant for the arrest of the state trooper who was a
17 key witness."
18 3. The prosecutor refused to have the officer arrested, and the judge then
held the prosecutor in contempt for "refusal to obey his order."
19 4. The judge then placed the prosecutor under arrest in the courtroom.

20 The judge was reprimanded on the basis of four distinct allegations, all of which included
21 displays of improper demeanor or bias. The commission noted the judge had "lost control of his
22 temper and failed to maintain patience and proper decorum in his courtroom." This decision
23

1 demonstrates a formal reprimand is only appropriate for misconduct that evidences a pattern of
2 behavior and facts far more egregious than the allegations against Judge Shelton.

3 (b) Cases from Other Jurisdictions

4 Inquiry Concerning Peter A. Bell. No. SC09-782 (Florida, 2009). Order of Reprimand
5 due to conclusion the judge's conduct was misguided but not ill-intentioned. The judge was
6 disciplined with a reprimand after improperly finding probable cause to support the arrest of a
7 victim of domestic violence who was then inappropriately incarcerated overnight. Although this
8 case is superficially similar to the allegations against Judge Shelton, contempt proceedings were
9 never invoked and not at issue, and there were numerous aggravating factors supporting
10 discipline.

- 11 1. Former husband appeared as defendant in a domestic violence battery.
12 After reading probable cause, the judge found probable cause that the
defendant assaulted his former wife.
- 13 2. The judge then found probable cause that the alleged victim, the former
14 wife, also committed domestic battery and ordered the former wife to be
15 taken into custody, incarcerated her overnight and ordered her to appear
the next day for a first appearance on the charge of domestic battery.
- 16 3. The judge explained his decision to find probable cause and take the
17 former wife into custody as he concluded "the former wife was the
primary aggressor and that the police officer arrested the former husband
18 for some other reason than his being the primary aggressor" even though
the officer had conducted interviews of the former husband, the former
19 wife, their two children, and observed injuries to the former wife and the
location of the incident.
- 20 4. The judge determined probable cause existed to arrest the wife "after
doing about five minutes worth of research on his computer."
- 21 5. The judge had a personal relationship with both parties which included a
22 more significant past and present relationship with the former husband:
23

- The judge knew the former husband prior to his marriage to the former wife, having met him 15 years prior when both were practicing attorneys.
- The judge attended the same church with the former couple, and his children babysat for the former couples' children.
- After the couple's divorce, the former husband would appear in the judge's court on a monthly basis, and he had only spoken to the former wife "at a social event."

In summary, the judge:

1. Should have disqualified himself due to the appearance of, if not actual, bias in the case given his past relationship to the two persons and, more importantly, the personal relationship with the former husband, and was personally biased when he jailed the former wife.
2. Conducted his own independent research.
3. Made a finding inconsistent with the officer's investigation and sworn statement which included the officer's observations of physical injury to the former wife.
4. Found probable cause for a criminal violation without a criminal charge pending.
5. Incarcerated the alleged victim overnight and ordered her to appear in court the following morning as defendant for a first appearance on a criminal charge that had not been yet filed in the court.

In comparison, Judge Shelton did not have a personal relationship with C.A. or the defendant, and he did not demonstrate bias or prejudice when entering his order. This case only serves to demonstrate that a Reprimand against Judge Shelton would be disproportionate.

Judge Lisa Guy-Schall – State of California (1995) Public Admonishment (which is apparently similar to a Reprimand in Washington). Determination that the judge's actions "constituted an abuse of the contempt power." This case is not remotely similar to Judge Shelton's case except for the use of the contempt power

1. A female respondent appeared before the judge in a petition for a restraining order, during which the judge ordered her out of the courtroom due to her behavior.
2. Once the respondent was out of the courtroom, the judge had the bailiff give her an opportunity to return to the hearing "if she would be willing to reappear in the court and keep herself under control."
3. The bailiff informed the judge that the respondent replied that "if the judge would not allow her to tell her story, she would probably 'go off' again."
4. In the respondent's absence, the judge found her in contempt, had her taken into custody outside the courtroom, and sentenced her to five days in jail without having her return to the courtroom and without giving any "facts underlying the finding of contempt."
5. During the investigation, the judge "acknowledged no problems in her handling of this matter."

In summary, the judge:

1. Imposed five days in jail which the respondent served in full;
2. Imposed the jail without the respondent's presence in court;
3. Did not giving any reasons on the record or to the respondent; and
4. Never recognized she made an error.

The facts of this case are somewhat similar, but far more serious, than the allegations against Judge Shelton. However, despite these aggravating factors, reprimand was the appropriate sanction. This demonstrates a reprimand is a sanction reserved for more serious instances of misconduct than the allegations against Judge Shelton.

Judge Fred L. Heene, Jr – State of California (1999) Public Censure (which is apparently similar to a Censure in Washington). Determination the judge failed "to respect the rights of unrepresented individuals" in "nine incidents in slightly less than two years" that were "not isolated unrelated incidents of misconduct." This series of incidents is not similar to the charges against Judge Shelton, except that four of the nine incidents of misconduct involved taking an

1 individual into custody without authority, one of which was pursuant to a stated finding of
2 contempt.

3 *Case No. 1*

4 During a preliminary hearing in a rape case, the alleged female victim "testified
5 inconsistently with what she told police" and "testified that she had given the police information
6 that was not true."

- 7 1. The judge ordered her into custody and imposed bail of \$25,000 because
8 "[s]he had admitted to this Court a crime."
- 9 2. The judge denied the prosecutor's request for a recess and took her into
10 custody even though the prosecutor and then the prosecutor's supervisor
11 noted no charges were pending against the victim by stating several times
12 that the victim had admitted during cross-examination that she had
13 committed the crime of filing a false police report.
- 14 3. The judge ordered the victim back to the courtroom, told her he would
15 order a transcript for the prosecutor's review of criminal charges, ordered
16 her to return to the court and then, on the prosecutor's continued request,
17 withdrew the order to return to court and released her from custody.

18 In summary, the judge:

- 19 1. Apparently found probable cause for a criminal violation by an alleged
20 rape victim who was not before him on a criminal charge.
- 21 2. Incarcerated the alleged victim and set significant bail and ordered her to
22 appear in court apparently for a first appearance on a criminal charge that
23 had not been filed in the court.
- 24 3. Released her from the court's jurisdiction only at the continued and
25 repeated insistence of the prosecutor.

26 *Case No. 4*

27 A female defendant on a criminal case was ordered to complete community service in
28 lieu of fines by another judge, and came to the courthouse to request an extension to enable her
29

1 to complete the community service. She was sent to Judge Heene's courtroom to ask for an
2 extension, apparently ex parte.

- 3 1. The defendant advised she did not complete her community service nor
4 pay the fine, as she was pregnant and on bed rest for the prior two months.
- 5 2. The judge determined she had not paid her fine nor completed community
6 service and took her into custody for 44 days in lieu of the fine or
community service.

7 In summary, the judge:

- 8 1. At an unscheduled hearing on a case under the jurisdiction of another
9 judge, imposed significant jail time on an unrepresented defendant for
unpaid fines.
- 10 2. Did not advise her that "he was conducting a violation herein."
- 11 3. When informed that she had a seven-day-old baby at home, the judge
replied, "Ma'am, you should have thought about that a long time ago."

12 *Case No. 5*

13 During a jury deliberation, a juror was late in returning to court.

- 14 1. The judge "asked for an explanation for being late, then found the juror in
15 contempt and remanded him."
- 16 2. "The judge did not cite the juror for contempt nor inform the juror that he
was conducting a contempt hearing before finding him in contempt."

17 In summary, the judge did not follow the proper contempt procedures.

18 *Case No. 6*

19 During an arraignment on a criminal case for failure to attend traffic school, which was
20 stayed pending completion of a traffic school (apparently associated with a speeding ticket), the
21 defendant stated she was unable to pay the entire balance of fines owing on the speeding ticket.

- 22 1. The judge then took her into custody for 20 days apparently on the
23 pending criminal charge in lieu of payment of the balance on the speeding
ticket.

2. The judge “sentenced the defendant in the absence of a guilty or no contest or conviction at trial.”

In summary, the judge had no authority to incarcerate the defendant, and the facts are far more egregious than the allegations against Judge Shelton, and none of them support the proposed sanction of a reprimand.

In Re Douglas Mills – State of New York (2004) Public Censure. Determination based on two cases that the judge “abused his judicial power by depriving individuals of their liberty, without just cause or due process.” These two incidents are not factually similar to Judge Shelton’s case, although one involved taking an individual into custody pursuant to a stated finding of contempt.

Case No. 1

During a non-jury trial, the judge informed the defendant that "The next time you have an outburst like that, I will hold you in contempt, and sentence you to ten days in the Saratoga County jail" and "I am warning you, if you interrupt me, you will go to jail." After the judge found the defendant not guilty, the judge proceeded to conduct what he termed a "contempt hearing."

1. The judge stated, "...the Court is not going to avoid having a conversation with you about your attitude, which is much more important to me than this whole proceeding."
2. Even though the defendant immediately said "I am sorry," the judge accused him of being "disrespectful to the Court."
3. When the defendant attempted to respond, the judge said, "Now we're going to have a contempt hearing. You've interrupted me again."
4. The judge found the defendant in contempt for interrupting him and sentenced him to three days in jail.

2. The judge then stated, "I want a temporary order of protection in favor of her against him. He's barred from the house."
3. The judge concluded with, "You're going to behave like that around me, you're going to be under arrest."
4. The judge then declined the request of the man's attorney to disqualify himself as the judge was a witness and also denied the attorneys request for the judge to set bail.
5. The man was handcuffed in the courtroom taken into custody and placed in a cell without access to his medications.
6. After three hours in custody, the man's attorney arranged an arraignment before another judge who released the man on his personal recognizance.
7. After the county district attorney recused himself, a district attorney from another county was assigned, the case was transferred to a different court, and the district attorney then dismissed the case.
8. In addition to the incarceration, the man incurred \$1,500.00 in legal fees to defend himself.

In summary, the judge:

1. Incarcerated a man on an unfiled criminal charge.
2. Refused to disqualify himself even though he was a witness to the alleged criminal act.
3. Held the man without bail.
4. Attempted to impose a No Contact Order in a case.
5. Endangered the man as he was incarcerated without access to his medications.
6. Impacted the man financially as he expended "\$1,500.00 in attorney fees."
7. Impacted the local court and the prosecutor's office by the consequences of his actions which were the recusal of the prosecutor and assignment to another county's prosecutor and the need to change venue to a different court for a case that was then dismissed.

1 The level of misconduct in these two cases, which was described as a "mean-spirited, substantial
2 overreaction to conduct that in no way warranted such extreme punitive measures," far exceeds
3 the allegations against Judge Shelton, as there is absolutely no evidence suggesting Judge
4 Shelton was biased, prejudiced, or otherwise hot-tempered when he entered his contempt order.
5 This decision is not analogous or persuasive.

1 APPENDIX C – Judge Shelton’s Background and Qualifications

2 In considering the allegations herein, Judge Shelton also respectfully requests the
3 Commission to consider the proceedings in the context of his legal career as a deputy prosecutor,
4 city attorney, and judicial officer as summarized below.

5 Legal Background

6 All judges must maintain and enhance the integrity of the judicial system by the fair and
7 consistent application of the law and constitution to the facts of each case. A judge must treat all
8 individuals equally and with dignity and respect, and should always strive to build public trust
9 and confidence in the judiciary by improving access and understanding of the courts to the
10 citizens. After 17 years as a judge hearing thousands of cases, I still value each case because it
11 has significance to the defendants, the attorneys, the defendants’ family and friends, the victims,
12 the police officers, and the community. On any given day, I preside over a courtroom full of
13 people, see anywhere from 50 to 100 defendants charged with cases ranging from parking tickets
14 to significant assaults and automobile accidents, and make hundreds of decisions which result in
15 conditions of release and dispositions ranging from minimal traffic fines to long term
16 incarcerations. To fulfill my responsibility, I have to care what happens to the individuals
17 involved. I fully understand that without really caring, I would not have the inclination, energy
18 nor will to exercise my best legal judgment in making each and every decision, day in and day
19 out.

20 I have been addressing the tragedy of domestic violence for over 27 years as a deputy
21 prosecuting attorney in district and superior courts, a city attorney, a district and superior court
22 pro tem commissioner, and a municipal court judge in three jurisdictions. As a Pierce County
23 felony deputy prosecutor assigned to the Special Assault Unit (SAU) and as the district court

1 chief deputy, I filed and prosecuted criminal charges against numerous defendants charged with
2 domestic violence. During the course of those prosecutions, I had significant inter-personal
3 contact with the victims and their families. As a *pro tem* superior court commissioner, I heard
4 petitions for orders of protection and motions in dissolutions wherein domestic violence was
5 alleged. As a municipal court judge, I have 17 years of direct experience with victims and
6 challenges of domestic violence criminal prosecution. I have presided over innumerable
7 domestic cases at all stages of prosecution. During each of these criminal cases, I have had to
8 address numerous difficult issues, including no contact orders, the imposition of bail, recanting
9 and reluctant witnesses, and imposing jail sentences. Also, during my judicial career, I have
10 attended many classes addressing domestic violence issues at judicial conferences. I believe that
11 I have been able to develop a solid understanding of the dynamics of domestic violence. During
12 the past year I have made changes to court proceedings to better address the dynamics and
13 dangers of domestic violence: (1) I have adopted a local rule which places a no bail hold on
14 anyone charged and arrested for a domestic violence crime which enables me to review the case
15 and impose appropriate conditions of release; and (2) I have reserved two pre-trial calendars a
16 month solely for domestic violence cases so the complicated issues inherent in addressing
17 domestic relationships can be addressed by the court, the prosecutor, the defense counsel, the
18 domestic violence advocate, and the probation officer.

19 I have participated in two out-of-court endeavors which I believe have been helpful in
20 addressing domestic violence. As an original board member of the eastern Pierce County
21 Alliance Against Domestic Violence (PCAADV), I assisted in establishing the Alliance and
22 provided the Puyallup courtroom for monthly meetings to provide more direct and convenient
23 assistance to victims of domestic violence in east Pierce County. In later years, I was able to

1 partner with the judge of the Fife Municipal Court to establish the first Domestic Violence
2 Victim Impact Panel (DV VIP) in the State of Washington. The goal of the DV VIP was
3 patterned after the statutorily created DUI VIP—to create an empathetic understanding by
4 perpetrators of the physical and emotional harm caused to victims of domestic violence.
5 Although various courts, judges and treatment agencies were skeptical, the DV VIP was
6 successful, and other courts and treatment agencies in the state have created their own panels.

7 Judicial Background

8 (a) **State Judicial Governance**

9 My long involvement with the District and Municipal Court Judges Association
10 (DMCJA), the Board of Judicial Administration (BJA), and the Administrative Office of the
11 Courts (AOC) has given me an extraordinary opportunity to better understand and appreciate the
12 state judiciary, and to be very well acquainted with judicial officers from all levels of court
13 throughout the state of Washington. My participation has also enabled me to better understand
14 the state legislative process as I have represented the judiciary in numerous conversations with
15 legislators and I have appeared and testified before the House and Senate judiciary committees.

16 I believe that my experience with the governance of the state judiciary is an extraordinary
17 accomplishment that has enabled me to become an exceptional judge. I have been able to serve
18 the state judiciary as follows:

19 Washington State District and Municipal Court Judges' Association (DMCJA)

20 2009-2010 Chair, Diversity Committee
21 Moderator/Presenter – DMCJA-WSBA Pro Tem Judge Training
22 CLE
23 Peer Counselor – Judicial Assistance Committee

2008-2009 Past-President
Board Liaison to WSBA Board of Governors

Chair – Diversity Committee
Chair – Nominating Committee
Peer Counselor - Judicial Assistance Committee

2007-2008 President

2006-2007 President-Elect
Co-Chair – Long Range Planning Committee

2005-2006 Vice-President
Chair – Long Range Planning Committee

2004-2005 Secretary-Treasurer

1999-2002 Board member

1998-1999 Municipal Court Task Force

1995-1997 Legislative Committee

Washington State Board of Judicial Administration (BJA)

2007-2008 Member (President-DMCJA)

2006-2007 Non-voting Member (President-Elect-DMCJA)

(b) Judicial College

I have been a faculty member of the Judicial College presenting the session on “Judicial Independence in Municipal Courts” to newly-elected and appointed municipal court judges from across the state. In this capacity, I have been able to not only provide the substantive basis for understanding the necessity of an independent judiciary, but also to provide a pragmatic approach to new judges as they address issues in their individual city governance. Through my experiences and “story-telling,” I am hopeful that I have assisted my brethren in maintaining and/or establishing judicial independence in their city or town governance.

1 (c) **Judicial Peer Assistance Committee**

2 I have been selected to serve on the DMCJA Judicial Assistance Committee as a Peer
3 Counselor, and have attended annual training workshops to become able to be a resource for
4 judges in need of counseling for such issues as addiction, depression, suicide and work "burn-
5 out." The Judicial Assistance Services (JAS) was created in 2004 to explore how judges can
6 receive confidential help and intervention when they need it. The challenge is that judges,
7 because of their unique positions and responsibilities, often find themselves with limited avenues
8 for help. The JAS is modeled after and affiliated with the WSBA Lawyers Assistance Program,
9 and offers help from trained peer counselors at no cost, and referral to confidential professional
10 help. I am certain that this training has enabled me to become a more complete judge as I better
11 understand the negative impacts the responsibilities and experiences of judging can have on an
12 individual. I am also hopeful that I will be ready to assist a fellow judge who may be in need of
13 obtaining professional assistance to address personal challenges.

14 (d) **Diversity of the Judiciary**

15 I fervently believe that diversity of the judicial system is a priority goal of the judiciary.
16 To instill and maintain confidence in the judiciary, judges and judicial staff must reflect the
17 diversity of the electorate in gender, race, cultural and ethnic background and sexual orientation.
18 The question is, "how?" The easy answer is, to encourage more diverse attorneys to run for
19 election or seek appointment to the bench. However, a candidate for election or appointment
20 generally needs a level of judicial experience to be successful. In addition, a candidate needs to
21 be able to know how to obtain such experience.

22 For this reason and others, the DMCJA Diversity Committee of which I was chairman
23 was successful in requesting the Association members to approve a by-law amendment which I

1 drafted that not only makes diversity of membership a priority, but mandates that the DMCJA
2 work with the WSBA and minority bar associations, the Gender and Justice Commission, the
3 Minority and Justice Commission, and other associations to work toward this goal.

4 To implement this mandate, the DMCJA co-sponsored with the WSBA a Pro Tem Judge
5 Training CLE Program that will enable interested attorneys to gain judicial experience and
6 become better candidates for judicial positions. The Diversity Committee and the WSBA CLE
7 program developed the curriculum and created the CLE. I was the moderator and a presenter for
8 the one-and-one-half day CLE program. The February 2010 program in Seattle, wherein almost
9 200 attorneys attended was, an extraordinary success, and the program in Spokane in late March
10 included about 65 attendees. In looking at my years involved with DMCJA governance, I am
11 very pleased and proud that as President I was able to lead the Board to become pro-active in
12 striving to achieve diversity on the bench and as Chair of the Diversity Committee I was able to
13 assist in creating the pro tem judge training which should provide opportunities for all attorneys
14 regardless of gender, culture, race or sexual orientation to become judicial officers.

15 **(e) Overview of the Puyallup Municipal Court**

16 In 2008, after multiple meetings with the Puyallup City Manager and City Council, I was
17 able to prevail over the opposition of the City Manager and City Attorney and convince the
18 Council that the volume of cases required a full time judge. The annual case filings increased
19 from approximately 10,600 in 2003 to approximately 14,000 in 2009. In the same time frame,
20 DUIs increased from 263 to about 600. Not only did the increasing case load support the change,
21 I also saw the emergent need for an independently-elected judge to avoid the increasing intrusion
22 of the new city administration into the independence of the Court. Given the caseload increases, I
23 view my ability to preside over an ever-increasing case load as a noteworthy accomplishment, in

1 and of itself. The Washington State Administrative Office of the Courts concluded that the 2009
2 Puyallup case load requires 1.79 judges and the current case load requires 1.81 judges, which
3 does not include photo enforcement cases. I am the only judicial officer. Despite the
4 implementation of calendar management revisions, there are days when I am on the bench
5 continuously with short breaks for eight to nine hours, and see between eighty and one-hundred
6 defendants. During all court sessions, I endeavor to devote the same energy and attention to each
7 case. In November 2009 running unopposed, I was elected for a four-year term. Now, as an
8 elected rather than appointed judge, I have been able to insure that the Puyallup Court will
9 maintain proper judicial independence and be properly considered as the third branch of city
10 governance.

11 (f) Overview of the Sumner Municipal Court

12 As the Commission is well aware, the former judge of Sumner Municipal Court, Eugene
13 Hammermaster, was investigated by the Commission on Judicial Conduct. In In re Hon. A.
14 Eugene Hammermaster, 139 Wn.2d 211 (1999), the Supreme Court upheld the Commission
15 findings that Judge Hammermaster had violated numerous judicial canons. Although I was
16 appointed as the interim judge during Judge Hammermaster's suspension and made significant
17 changes, I was not able to maintain those changes until I was appointed the Sumner judge in
18 2002 upon Judge Hammermaster's retirement. Specifically, I simply treated all individuals
19 appearing in court with respect and dignity, provided the full advisement of rights to all
20 defendants, implemented the proper procedures for the appointment of the public defender,
21 required that an attorney rather than a paralegal represent the city in court proceedings, and
22 insured the fair and proper legal conditions of release and sentencing. From 2002 to 2008, I was
23 able to completely change the culture of the Sumner Court from a "good old boy" extension of

1 the police department to enable it to be an independent court which provided proper due process
2 to all defendants.
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