

FILED
JUL 8 - 2011
COMMISSION ON JUDICIAL CONDUCT

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BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In Re the Matter of:) CJC No. 6527-F-152
The Honorable John V. Lyman,)
Judge of the Tumwater)
and Tenino Municipal Courts)
_____)
STIPULATION, AGREEMENT
AND ORDER OF REPRIMAND

The Commission on Judicial Conduct and John V. Lyman, Judge of the Tenino and Tumwater Municipal Courts, 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. Respondent has been represented in this proceeding by attorney G. Saxon Rodgers, of Olympia.

I. STIPULATED FACTS

1. Judge John V. Lyman (Respondent) is now, and was at all times referred to in this document, a judge of the Tenino and Tumwater Municipal Courts. Respondent has served as a judge in Tenino since approximately 1979 and in Tumwater since 1989.

2. On September 25, 2010, Respondent was arrested in Tumwater for Driving Under the Influence and Hit and Run. According the police report, Respondent struck and damaged a parked car as he left the restaurant at a Tumwater golf course and rear-ended another vehicle at a stoplight. The occupants of that vehicle called 911 and followed Respondent to his residence, where police arrived and contacted him. Respondent consented to a breath alcohol test, the results of which were .135 and .140. The legal limit is .08.

3. Respondent entered into a deferred prosecution on January 11, 2011, on the

ORIGINAL

1 charges of driving under the influence of alcohol and hit and run of an unattended vehicle.¹

2 In a deferred prosecution, a defendant admits that the offense took place, but alleges
3 that the conduct was the result of alcoholism, drug addiction, or mental health issues for which
4 the defendant is in need of treatment, else the offense is likely to recur. This disposition is not
5 available to a person who sincerely believes he is innocent of the crime charged or who does
6 not suffer from one of the above-listed issues. The defendant further agrees not to contest the
7 facts in the case, should the deferral be revoked, but agrees instead a trial of the matter would
8 simply consist of the judge reading the police reports and other documents filed in the case.
9 The judge would then base a finding of guilty or not guilty based on those written materials
10 alone. In this instance, Respondent's petition to the court alleged that the wrongful conduct
11 charged was the result of alcoholism. He is obliged to comply with the terms set forth by the
12 court in accepting his petition, including completion of a two year alcohol treatment plan. He
13 remains under the jurisdiction of the court for five years, whereupon, if the conditions have all
14 been satisfied, the charges of driving under the influence of alcohol and hit and run will be
15 dismissed per the deferred prosecution statute. This is a relatively common resolution of DUI
16 and related charges in courts of limited jurisdiction.

17 4. The Commission on Judicial Conduct (Commission), pursuant to its
18 constitutional authority, commenced initial disciplinary proceedings on February 17, 2011 by
19 contacting Respondent and serving him with a Statement of Allegations. The Statement of
20 Allegations alleged that:

21 ...by the conduct indicated below, John Vance Lyman, Judge of the
22 Tumwater Municipal Court, may be in violation of Canons 1 and 2(A) of the
Code of Judicial Conduct.

23 It is alleged that you committed the gross misdemeanor and
24 misdemeanor of Driving Under the Influence and Hit and Run of an Unattended
25 Vehicle in an incident that occurred on September 25, 2010, were charged in
Tumwater Municipal Court and resolved the criminal case by entry of a
deferred prosecution on January 11, 2011.

26
27 ¹ The case was filed in the Tumwater Municipal Court, but a special prosecutor was appointed, the proceedings
28 were held in Thurston County District Court and were presided over by an out of county judge. Respondent struck two
vehicles, and the second one sustained no damage, thus the prosecutor did not charge hit and run of the attended vehicle.

1 set out in Rule 6(c) of its Rules of Procedure.

2 a. Characteristics of the Misconduct.

3 Respondent has no prior criminal history, and this appears to be an isolated incident.
4 Driving under the influence is a serious offense that can result in great bodily injury. Here,
5 however, only minor property damage was sustained. Respondent showed the Commission
6 proof of restitution for that damage. The misconduct occurred outside the courtroom, in the
7 judge's private life. It is troubling that Respondent, who presides regularly over DUI and hit
8 and run cases, has violated those very laws. However, both prosecution and defense counsel
9 contacted by the Commission have relayed their confidence in Respondent's capacity to be
10 even-handed and fair. There is no evidence that the judge flagrantly or intentionally violated
11 the oath of office. The judge comported himself appropriately at the scene and throughout the
12 case, there is no evidence he exploited his official capacity in his interactions with the police
13 or later, with the court process. This incident, however, has damaged the public's respect for
14 Respondent and the judiciary.

15 b. Service and Demeanor of Respondent.

16 Respondent has acknowledged the acts occurred and, by his agreement to undergo
17 treatment for alcoholism, has evidenced an effort to avoid repeating the behavior that led to this
18 disciplinary action. He has served in a judicial capacity for over 30 years and has had no prior
19 discipline imposed against him. Respondent has fully cooperated with the Commission,
20 although it should be noted that he did not self-report this misconduct.

21 2. The Commission's cases in recent years sanctioning judges charged or convicted
22 of similar charges have resulted in the sanction of reprimand. Considering this precedent, the
23 above stipulated facts and balancing of the above factors, Respondent and the Commission
24 agree that Respondent's stipulated misconduct shall be sanctioned by the imposition of a
25 reprimand. A "reprimand" is a written action of the Commission that requires a respondent to
26 appear personally before the Commission and that finds that the conduct of the respondent is
27 a violation of the Code of Judicial Conduct, but does not require censure or a recommendation

1 to the supreme court that the respondent be suspended or removed. A reprimand shall include
2 a requirement that the respondent follow a specified corrective course of action. Reprimand
3 is the intermediate level of disciplinary action available to the Commission.

4 **C. Terms of Commission Stipulation**

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

7 2. Respondent agrees he will not repeat such conduct in the future.

8 3. Respondent agrees he will promptly read and familiarize himself with the Code
9 of Judicial Conduct in its entirety and certify in writing that he has done so within 60 days of
10 the date this stipulation is entered.

11 4. Respondent agrees to waive confidentiality of his alcohol treatment to make it
12 available to Commission personnel, in order that the Commission be provided with monthly
13 progress reports.

14 5. Respondent agrees to comply with the following corrective terms and
15 conditions:

16 a. Compliance with Municipal Court Terms and Conditions. Respondent
17 shall comply with all of the terms and conditions set forth in the "Findings of Fact, Conclusions
18 of Law and Order Granting Deferred Prosecution," dated January 11, 2011, in *City of*
19 *Tumwater v. John V. Lyman*, City of Tumwater Cause No. P10-00030, and provide proof to
20 the Commission of Respondent's satisfactory ongoing compliance with the treatment program
21 set out therein, and with the other terms and conditions imposed by the Tumwater Municipal
22 Court.

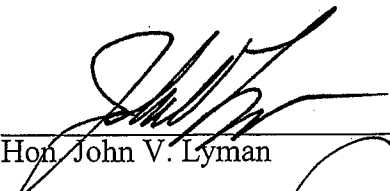
23 b. Recusal from Conduct-Related Matters. Respondent believes that he
24 can hear fairly and without bias, prejudice or conflict, matters involving legal charges of
25 driving under the influence of alcohol and/or charges of hit and run. Respondent
26 acknowledges, however, that the prior and current Codes of Judicial Conduct require judges
27 not only to avoid impropriety, but also to avoid the appearance of impropriety, in all their

1 activities, and that his hearing such cases, even if not itself improper, may give the appearance
2 of impropriety. Accordingly, Respondent agrees that upon timely request of a party appearing
3 before the court once a matter is set, he will recuse himself voluntarily as a judge from hearing
4 or participating in matters involving legal charges of driving under the influence of alcohol
5 and/or charges of hit and run for the time period Respondent is under the jurisdiction of the
6 Tumwater Municipal Court with active obligations to that court. The Commission
7 acknowledges that Respondent's advance voluntary agreement to recuse in such instances is
8 not otherwise legally compelled, and does not imply that Respondent might in fact fail to
9 exercise appropriate discretion in deciding whether to recuse from hearing specific cases. This
10 provision is agreed to by Respondent in acknowledgment of the concerns of the public, in
11 sensitivity to suspicions of either a double standard or undue leniency, and to help reestablish
12 the public confidence in the integrity and impartiality of the judiciary which Respondent's
13 conduct has impaired.

14 c. Public Presentations. In further pursuit of the goal of regaining the trust
15 and confidence of the public, within three years from the date hereof, Respondent shall
16 participate, and provide proof thereof to the Commission, as a speaker in no less than five
17 public appearances on matters related to his stipulated misconduct, presented either to
18 community organizations or to Washington judicial associations. The venue of the
19 presentations must be approved in advance by the Chair of the Commission and the content of
20 the presentation approved afterward in order for Respondent to receive credit for these
21 presentations.

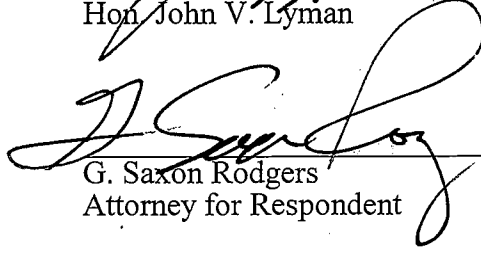
22 6. Respondent agrees that by entering into this stipulation and agreement he hereby
23 waives his procedural rights and appeal rights pursuant to the Commission on Judicial Conduct
24 Rules of Procedure and Article IV, Section 31 of the Washington State Constitution in this
25 proceeding.

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Hon John V. Lyman

6-28-2011
Date



G. Saxon Rodgers
Attorney for Respondent

6/28/2011
Date




J. Reiko Callner
Executive Director
Commission on Judicial Conduct

6-30-11
Date

ORDER OF REPRIMAND

Based on the above Stipulation and Agreement, the Commission on Judicial Conduct hereby orders Respondent, Judge John V. Lyman, reprimanded for the above set forth violations of the Code of Judicial Conduct. Respondent shall not engage in such conduct in the future and shall fulfill all of the terms of the Stipulation and Agreement as set forth therein.

DATED this 8 day of July, 2011



John W. Sleeter, Chair
Commission on Judicial Conduct