

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In The Matter Of:)
)
The Honorable Edwin L. Poyfair,) CJC No. 6691-F-153
Clark County Superior Court Judge)
)
) **STIPULATION, AGREEMENT**
) **AND ORDER OF CENSURE**
)
_____)

The Washington State Commission on Judicial Conduct ("Commission") and the Honorable Edwin L. Poyfair, Judge of the Clark County Superior Court ("Respondent"), 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 accepted by the Commission.

I. STIPULATED FACTS

1. Respondent is now, and was at all times referred to in this document, a judge of the Clark County Superior Court. He has served in that capacity since 1992.

Matter One: *In Re the Adoption of L. M.-H.*

2. On January 28 and February 11, 2011, Respondent presided over two hearings¹ in a voluntary adoption case, *In Re the Adoption of L. M.-H.*, Cause No. 10-5-00250-7. In that matter, a birth mother, "M.M.", had placed her child, born March 8, 2010, for adoption with a married couple when the child was approximately six weeks old. The January 28, 2011 hearing was set to terminate the parental rights of the biological father, who had not previously participated in the case. Shortly before that hearing, M.M. learned that the prospective adoptive father had a history of sexual misconduct with young girls,

¹ Respondent presided over two subsequent hearings in the case, only the first two are the subject of this disciplinary matter.

1 whereupon M.M. no longer wished the couple to adopt her child. M.M. believed,
2 incorrectly, that she had already waived her rights to the child. To prevent the adoption,
3 and believing that she had no legal right to obtain return of the child to her, M.M.
4 persuaded the birth father, "G.H.," to come to court on the 28th and ask for the child to be
5 placed with him. Neither M.M. nor G.H. were represented by counsel at this hearing.
6

7 After calling the case and learning the names of the parties in court, Respondent
8 immediately inquired whether G.H., who is of Hispanic origin and spoke Spanish, was in
9 this country legally. When G.H. answered that he was not legally here, Respondent replied
10 that "Well then maybe we should call Immigration before you leave and find out if they wish
11 you detained." Respondent did call a law enforcement officer to the courtroom, but was
12 informed by that officer that he could not detain G.H. In the 26 minute hearing,
13 Respondent referenced G.H.'s immigration status seven times, going so far as to say that
14 he was "going to note for the authorities that he is illegal and that if in fact he should not
15 be here then he should be picked up and he should be sent back." Respondent then
16 required G.H. to give him his identification. Later in the hearing, Respondent returned to
17 the subject and said, "I don't know where Immigration is right now, I know that they, up in
18 King County, they're having a field day picking people up, I don't know down here what
19 they're doing..."
20

21 In response to M.M.'s desire that the child be placed with G.H., Respondent said,
22 "Ma'am, this isn't WalMart. And he doesn't get to go to the shelf and pick a baby off all
23 right?" He went on to say, "It's not taking back a pair of shoes." When M.M. attempted to
24 explain that she no longer wanted the petitioners to adopt her child because she had
25 learned the prospective adoptive father had a history of sexual misconduct with young girls,
26 Respondent cut her off and threatened her with contempt of court, saying, "You're going
27 to spend the weekend here if you open your mouth again before I tell you to open it."
28

1 Although Respondent had the case file present in the courtroom, he made no effort
2 to check the status of the case. Respondent states that at the time of this January 28th
3 hearing he was concerned that all statements made by M.M. and G.H. were verbal and that
4 they did not present any written pleadings. Respondent understands now that none were
5 required by law. He never informed M.M. that her rights had not been terminated. He did
6 not inquire as to the allegations concerning the prospective adopting father. Instead, he
7 continued the case while permitting the child to remain with the petitioners for adoption.
8

9 3. Respondent continued the matter to February 11 and without explanation
10 or direction, told the birth parents, neither of whom were represented by lawyers, that they
11 needed to file "answers" in order to prevent the adoption and that failure to do so would
12 result in him finalizing the adoption. In addition, despite indicating on the record that the
13 apparently confused birth parents had an absolute right to counsel, Respondent did not
14 give them any information as to how they could obtain a court-appointed attorney.
15

16 4. G.H. did not come to court for the hearing on February 11. On the record
17 M.M. explained G.H. was not present because Respondent "scared him" and he thought
18 he was going to "get deported" to which Respondent replied that "he ought to be." Both
19 G.H. and M.M. had filed declarations with the court, indicating their desire to stop the
20 adoption. Respondent told M.M. that the declarations were not in the proper form, and in
21 granting a one week extension, said "if you fail to get your response within one week, then
22 I'm going to finalize the adoption." There is, however, no prescribed form which must be
23 used by a birth parent to indicate her revocation of consent prior to termination of rights.
24 Respondent still did not direct M.M. to court-appointed counsel, though she was plainly
25 legally entitled to such representation. In referring to G.H., Respondent said he "would not
26 grant custody of a child to an illegal." Respondent did not return the child to the mother,
27 a legal parent, and not having done so, he once more left the child with the prospective
28

1 duties of judicial office fairly and impartially. Rule 2.3(A) requires that judges perform the
2 duties of judicial office without bias or prejudice. Rule 2.3(B) states that judges shall not
3 manifest bias or prejudice or engage in harassment, which is defined as verbal or physical
4 conduct that denigrates or shows hostility or aversion toward a person on bases such as
5 race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation,
6 marital status, socioeconomic status, or political affiliation. Rule 2.8(B) requires judges be
7 patient, dignified and courteous.
8

9 4. Discourteous and intolerant behavior by a judge in the judge's official capacity
10 erodes the public's confidence in the impartiality and integrity of the judicial system in
11 several ways. Judicial intemperance can give the impression that the judge's ruling is
12 based on personal feelings, rather than on the law and facts of a case. It is bullying
13 conduct, in that a litigant is not free to respond in kind because of the power imbalance.
14 This is particularly troubling in a case where such a fundamental and heartfelt interest as
15 child custody is at stake. It creates the possibility that those subjected to the conduct will
16 be intimidated and/or distracted from presenting their cases. Public confidence in the
17 integrity and impartiality of the judiciary is also undermined when a judge's conduct creates
18 in the mind of a reasonable person the perception that the judge is exercising bias or
19 prejudice, regardless of whether the perceived bias or prejudice exists.
20

21 **B. Imposition of Sanction**

22 1. The sanction imposed by the Commission must be commensurate to the
23 level of Respondent's culpability and must be sufficient to restore and maintain the dignity
24 and honor of the judicial position. The sanction should also seek to protect the public by
25 assuring that Respondent and other judges will refrain from similar acts of misconduct in
26 the future.
27

28 2. In determining the appropriate level of sanction to impose, the Commission

1 has carefully considered the factors set out in CJCRP 6(c).

2 A. Characteristics of Respondent's Misconduct.

3 (i) Whether the misconduct is an isolated instance or evidence of a pattern of conduct.

4 Respondent expressed frustration and anger at litigants in custody matters in more
5 than one hearing and in more than one case. While the Commission does not have
6 evidence that he consistently does so, it is not accurate to call this misconduct an
7 isolated incident. In addition, his improper conduct appears to stem from his sense
8 of personal involvement in child custody matters.

9
10 (ii) The nature, extent, and frequency of occurrence of the acts of misconduct. The
11 nature of the misconduct was intimidation of unrepresented litigants who were seeking
12 to retain custody of their biological child; and anger and intimidation directed at litigants
13 who were contesting custody of their child. The conduct took place over the course
14 of hearings in two cases.

15
16 (iii) Whether the misconduct occurred in or out of the courtroom. The misconduct
17 occurred in the courtroom.

18 (iv) Whether the misconduct occurred in the judge's official capacity or in the judge's
19 private life. The misconduct occurred in the judge's official capacity.

20 (v) Whether the judge flagrantly and intentionally violated the oath of office. It is the
21 paramount duty of a judge to uphold the constitution: to afford due process to all
22 litigants, and to assure that litigants' constitutional rights are protected. While there is
23 not evidence that Respondent intentionally or flagrantly transgressed his oath of office,
24 he failed to explain and protect the constitutional rights of the litigants in the voluntary
25 adoption case during the hearings at issue.

26
27 (vi) The nature and extent to which the acts of misconduct have been injurious to other
28

1 persons. The misconduct was significantly injurious as it deprived the biological
2 parents of their child for an additional three months, denied the child the care and
3 comfort of her parents, and left the child in potential danger from the prospective
4 adoptive father during that time. The judge's intemperate demeanor reasonably
5 appeared to inhibit the litigants' ability to present their concerns to the court in both
6 cases at issue.
7

8 (vii) The extent to which the judge exploited the judge's official capacity to satisfy
9 personal desires. Respondent did not exploit his office for personal gain.

10 (viii) The effect the misconduct has upon the integrity of and respect for the judiciary.
11 Respondent has explained his conduct by observing that family court can be frustrating
12 and emotional. He further explains that his conduct stems from his strong concern for the
13 well-being of children. However, it is precisely in the resolution of emotional,
14 contentious issues that a judge is required to be detached, neutral, and to resolve
15 contests based on law and a full presentation of facts, and not emotion, no matter how
16 sincere.
17

18 B. Service and Demeanor of Respondent.

19 (i) Whether the judge has acknowledged or recognized that the acts occurred. By
20 entering into this stipulation, Respondent has acknowledged that the acts occurred
21 and that his conduct was inappropriate.
22

23 (ii) Whether the judge has evidenced an effort to change or modify the conduct. Prior
24 to entry of this stipulation, Respondent voluntarily attended ethics training at the Spring
25 2011 Semi-Annual Judges' Conference held at Suncadia and has publicly announced
26 his retirement, effective May 1, 2012. Respondent's retirement was planned prior to
27 the initiation of this proceeding.
28

1 (iii) The judge's length of service in a judicial capacity. Respondent has been a full
2 time judicial officer for twenty years. As mitigating factors upon announcing his
3 retirement, Respondent has received several complimentary responses concerning
4 his twenty years of service on the Superior Court bench. In addition, Respondent was
5 voted Jurist of the Year in 2008, by the Family Law section of the Washington State
6 Bar Association.

8 (iv) Whether there has been prior disciplinary action concerning the judge.
9 Respondent was previously admonished by the Commission in 1995 in a matter
10 regarding a custody case.⁴

11 (v) Whether the judge cooperated with the commission investigation and proceeding.
12 Respondent's early, more emotional response to the Commission was tempered over
13 time while resolving the case. Respondent sincerely apologizes for his improprieties
14 and errors.

16 (vi) Whether the judge complied with an opinion by the ethics advisory committee. This
17 factor is not applicable.

18 3. Based upon the stipulated facts, upon consideration and balancing of the
19 above factors, Respondent and the Commission agree that Respondent's stipulated
20 misconduct shall be sanctioned by the imposition of a censure. A "censure" is a
21 written action of the Commission that requires Respondent to appear personally before
22 the Commission and that finds that the conduct of Respondent is a violation of the
23

25 ⁴ In that disciplinary action, pursuant to a stipulation and agreement, the Commission
26 admonished the judge who, without subpoena or official summons but under threat of subpoena, signed a
27 two-page affidavit that provided opinion evidence concerning the parenting skills of both parties in a pending
28 matter. In the affidavit, the judge declared "I am currently a sitting superior court judge" and that his opinion
was shared by other judges in the county. (*In re the Honorable Edwin L. Poyfair*, CJC No. 94-1921-F-57.)

1 Code of Judicial Conduct that detrimentally affects the integrity of the judiciary, and
2 undermines public confidence in the administration of justice. It is the highest level of
3 sanction the Commission can impose on its own. With a censure, the Commission
4 could also recommend to the Supreme Court that a respondent judge be suspended
5 or removed from office. The Commission and Respondent agree that such a
6 recommendation is not warranted in this matter, however. A censure shall include a
7 requirement that the respondent follow a specified corrective course of action.
8

9 4. Respondent agrees that he will not repeat such conduct in the future,
10 mindful of the potential threat any repetition of his conduct poses to public confidence
11 in the integrity and impartiality of the judiciary and to the administration of justice.
12

13 5. Respondent agrees that he will promptly read and familiarize himself
14 again with the Code of Judicial Conduct in its entirety and provide the Commission
15 with confirmation of this fact within one month of the date of entry of this stipulation,
16 agreement and order. In light of the training referenced above and Respondent's
17 announced intention to retire, the Commission has not sought additional remedial
18 measures.
19

20 Standard Additional Terms and Conditions

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

25 7. Respondent further agrees that he will not retaliate against any person
26 known or suspected to have cooperated with the Commission, or otherwise associated
27 with this matter.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

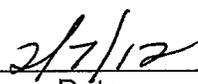
8. Respondent affirms he has consulted with or has had an opportunity to consult with counsel prior to entering into this stipulation.

Hon. Edwin L. Poyfair

Date



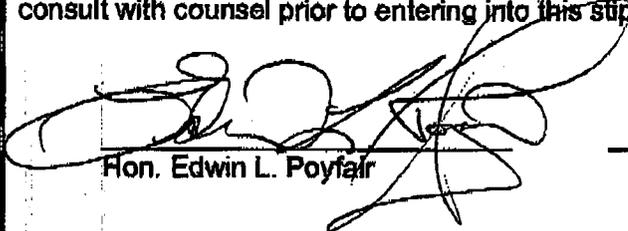
Rita L. Bender
Disciplinary Counsel
Commission on Judicial Conduct



Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. Respondent affirms he has consulted with or has had an opportunity to consult with counsel prior to entering into this stipulation.



Hon. Edwin L. Poyfair

2-7-12

Date

Rita L. Bender
Disciplinary Counsel
Commission on Judicial Conduct

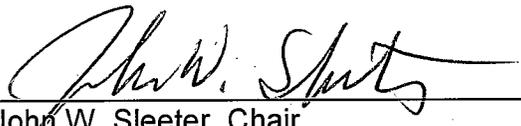
Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER OF CENSURE

Based on the above Stipulation and Agreement, the Commission on Judicial Conduct hereby orders Respondent, Judge Edwin L. Poyfair, CENSURED 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 4 day of May, 2012



John W. Sleeter, Chair
Commission on Judicial Conduct