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JAN - 9 2013
COMMISSION ON JUDICIAL CONDUCT

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

In re the Matter of The Honorable John P. Wulle, Judge, Clark County Superior Court	No. 6707-F-154 **AMENDED COMMISSION DECISION AND ORDER**

I. Introduction

The Honorable John P. Wulle has been a judge on the Clark County Superior Court since 2000. Prior to that, he served as a Clark County District Court Judge. Prior to that, he served as a lawyer in the Attorney General's Office and as a public defender.

The job of a superior court judge is high-stress and high-volume. Crowded criminal dockets, juveniles who appear on repeated violations, and domestic relations matters with pro se litigants are all part of a judge's workload. With pro se litigants, judges face people who do not always understand the legal process and who do not always behave with the decorum shown by counsel. Judges encounter some litigants who show an outright disrespect for the process and the judges themselves. It is a significant part of the superior court judge's job to manage this process and to control the courtroom, while treating the litigants and counsel with dignity and respect.

II. Charges

In February 2012, the Commission filed a Statement of Charges against Judge Wulle for his conduct at four separate proceedings, each of which is discussed below. The specific charge was that "Respondent has failed to maintain order and decorum in proceedings over which he

has presided and has engaged in a pattern or practice of discourteous, impatient and undignified behavior." The Statement of Charges alleged that his conduct violated Canon 1 (Rules 1.1 and 1.2) and Canon 2 (Rule 2.8) of the 2011 Code of Judicial Conduct "and/or" Canons 1, 2(A), 3(A)(2) and 3(A)(3) of the 1995 Code of Judicial Conduct. The reason that both the 1995 Code and the 2011 Code were cited is that two of the incidents occurred while the 1995 Code was in effect (which was until January 1, 2011), and two of the incidents occurred in 2011, when the new Code was in effect.

III. Judge Wulle's Responses

Judge Wulle made a series of different responses to these charges. In an initial response to the Statement of Charges, Judge Wulle admitted many of the charges, but asked the Commission to consider various mitigating factors for his behavior. In an amended answer filed by the same counsel, however, Judge Wulle denied each and every one of the charges. Then, in his deposition and confirmed by a declaration of Judge Wulle following the deposition, Judge Wulle stipulated that his conduct violated Canon 3(A)(3) of the 1995 Code and Rule 2.8(b) of the 2011 Code. As Judge Wulle's counsel made clear in closing argument, "He is subject to discipline." The question for the Commission is the appropriate level of discipline.

IV. Facts

A. The Four Incidents

All four incidents were recorded by the Clark County Superior Court's video system, and these videos as well as transcripts of the videos were introduced into evidence at the hearing.

1. March 2, 2009 (State v. Hastings) (Transcript: Ex. 116)

This was a sentencing hearing of a criminal defendant who had been convicted of multiple charges, stemming from an event at which he shot a police officer. While in jail, the

defendant had also taken a hostage. Over the course of a trial that took more than two weeks, the defendant resisted verbal control, though he was under high security in the courtroom. He used the "F" word with great regularity and he used his voice, his eyes, and his body language and bulk to try to intimidate everyone in the courtroom, including the police officers there to provide security.

The sentencing took place several weeks after the trial concluded. It began relatively uneventfully, as Judge Wulle asked the defendant whether he wished to speak before the judge made his sentencing decision. The defendant said, "No, Your Honor." But after Judge Wulle asked whether he had graduated from high school, the defendant made some kind of non-verbal response. When Judge Wulle said "don't press your luck with me son," the judge and the defendant then began to engage in a verbal tit-for-tat. The defendant told Judge Wulle to "just get on with your sentencing," and Judge Wulle responded, "Just shut your damn mouth sir."

The defendant continued with comments like "Good. Thank you. I'll take another. Can't give it to me, can ya?" The judge then went off the bench to see counsel in chambers (during which Hastings continued his manipulative and offensive language, now directed at the police officers in the courtroom).

When Judge Wulle came back on the bench, he apologized for losing his temper, saying "Mr. Hastings pushed my button." Judge Wulle then said, calmly, that the defendant's attorney had been "making points with me on what I was going to do in sentencing, but when you showed me your total disrespect . . . I see no reason not to stick with the decision I made." The defendant's sarcastic tone continued, and Judge Wulle said, "You're wasting your time with me now Mr. Hastings. I know how to handle a guy like you. The only thing I could say to you on behalf of all the citizens in this community, bye-bye," and Judge Wulle waved. The verbal

back-and-forth between the defendant (who was wearing handcuffs and a stun belt) and the judge then continued.

Judge Wulle admitted in his deposition that he "lost it" at this sentencing hearing; that his behavior was "totally inappropriate"; and that it was an "emotional response" to the defendant's manipulative and disrespectful behavior.

2. July 6, 2010 (State v. Juvenile Z.B.) (Transcript: Ex. 113)

This was a hearing on a juvenile offender's appearance on a probation violation. The juvenile had run away from an inpatient treatment facility. The hearing began relatively uneventfully, with the prosecutor explaining why the juvenile was there and that the juvenile "would probably like an attorney." The probation officer confirmed the request that "an attorney [be] appointed" and that the juvenile "be held." After the judge said that "He will be held," and the prosecutor said "Thank you, Your Honor," the juvenile said to the probation officer, "You seem happy about it." Then the juvenile said "I don't care."

In response to this apparent lack of respect for the process, Judge Wulle lost his temper and said, in a loud tone, "You care about what I do, don't you?" The juvenile then said, "No 'cause as soon as I get outta here, I'm just gonna end my shit," and he made a slashing gesture across his throat. Judge Wulle interpreted the hand gesture as menacing to his own personal safety, and ordered the juvenile in contempt of court: "He gets five days for that behavior."

The juvenile was then taken away by security. The audio of the hearing reveals that the juvenile was groaning and moaning, and complained that it hurt. Judge Wulle did nothing to intervene, but said to the defense lawyer, "Well, Mr. Borge, it looks like you got your work cut out for you."

In this instance, Judge Wulle appeared to have a hair-trigger reaction to a litigant's showing of disrespect, and he over-reacted in a way that exacerbated the lack of decorum in the court.

3. March 11, 2011 (Juvenile C.G.) (Transcript: Ex. 110)

This was a hearing on a juvenile offender's appearance on a warrant for a sentence conditions violation. No attorney was present for the juvenile. The juvenile said he wanted to admit to the probation violation without an attorney. Judge Wulle initially said "that's not a smart play," and that's "like going out onto the field with the New York Yankees and you never even learned how to play baseball." The juvenile said, "I just wanted to say I'm guilty and that's all. I'll just take what I can." The juvenile's mother then whispered (audibly), "This is so ridiculous," and Judge Wulle said, "I'm not going to accept an admission at this time."

When the juvenile then asked, "Why can't I just admit today" to the probation violation, Judge Wulle did not explain to the juvenile Judge Wulle's understanding that U.S. Supreme Court precedent, *In re Gault* , 387 U.S. 1 (1967), prevented the judge from allowing the juvenile to plead guilty without an attorney. Instead, Judge Wulle berated the juvenile, describing him in front of his mother and many other people in the courtroom as "too stupid to know that what I'm trying to do is protect you." Judge Wulle's voice was raised when he uttered those words.

Judge Wulle then calmed down to apologize "to everyone in the courtroom." He said, "I very rarely lose my temper, but when I do, it is usually because someone is too stupid to recognize that I'm trying to help them." He negated the impact of his apology by again using the word "stupid."

In this instance, Judge Wulle's tirade against the juvenile was more than discourteous. It was demeaning and personal in nature, when a simple explanation of the legal basis for the

judge's decision was all that was required. And as Judge Wulle recognized in retrospect (in his deposition), "I should have apologized to him, not the other way around."

4. October 25, 2011 (R. v. A.) (Transcript: Ex. 107)

This was a hearing on a motion for an order of protection filed by a woman against the father of her child. Neither the mother nor the father was represented by counsel. The man did not speak English as his first language and spoke through an interpreter. As in the other proceedings, it began with the litigants and Judge Wulle speaking calmly and deliberately.

The woman said she wanted a "restraining order" because "I'm scared of him. He's stalking me. He took me to court already six times for a paternity test ... he's still harassing me...." The man said, "Everything what she said is a lie." Judge Wulle asked if there was a legal action to establish him as the father and she said yes. Though there was no reference on the record to a specific case or court order, Judge Wulle then calmly and firmly said, "Sir, I need to tell you that the law has established you to be the father of this child, both by blood tests, which are DNA tests, and by legal action." When the man tried to complain about the type of test used to establish paternity, saying "It was a saliva DNA not blood," Judge Wulle raised his voice and pointing his finger at the man said, "You are the father of the child." The man, through the interpreter, continued to protest that he wanted a blood test to prove that he was not the father. Judge Wulle then said, "Sir, this is not the Soviet Union, this is the United States of America. We use the best and latest technologies to determine parentage of children." The man said in a raised voice, "I'm not talking about former Soviet Union, what the people in Europe use and they use blood tests." When the man would not stop speaking, Judge Wulle said, "Okay, I'm done. Your order's granted, you're outta here." The woman said thank you, and Judge Wulle's comment (which he later described as "flippant") was: "I suggest you watch

some CSI TV shows." The video of the proceeding shows this comment drew laughter from a packed gallery in the courtroom.

The man would not stop speaking (apparently in Russian). He was speaking loudly and was animated. Judge Wulle repeatedly told him to stop and said "stop him" to the interpreter. But the man did not stop, and Judge Wulle told him he was in contempt of court: "you are under arrest.... You are going into custody for two days" and that the reason was "two days contempt, wouldn't shut up." Judge Wulle later admitted in his deposition that he "lost it" in this hearing.

Later in that same hearing, but after the parties had left, Judge Wulle again offered an apology to those in the courtroom. He said, "Ladies and gentlemen, let me explain some basics to everyone in the courtroom so there's no confusion. One of the things that a judge is responsible for is creating order and dignity in a court of law and so a judge is given certain powers to keep the integrity of the court system going. . . . I apologize if I scared anyone, that was not my intent, I'm not used to being yelled at when I'm trying to do my job." Judge Wulle's gratuitous comments at this hearing about the Soviet Union and CSI are another instance of the judge's discourteous and demeaning treatment of a pro se litigant in his courtroom, and of his short and explosive fuse.

B. Prior Incidents and Discipline

The record indicates that as a judge, Judge Wulle served without incident until 2006. Judge Wulle was part of a team of lawyers and court administrators from Clark County Superior Court that attended a conference called "Planning Your Juvenile Drug Court." At various times while at the conference, Judge Wulle interrupted group discussion by using profanity and expletives to express his disapproval or indifference to pursuing federal funding for the Clark County Juvenile Recovery Court; said "F--- the feds"; raised his middle finger at a team

member who asked him to lower his voice; angrily yelled "F---you!" and stormed out of the room; referred to the county's facilitator at the conference as "the black gay guy"; and on one occasion said, "I don't need a star, I'm not a Jew."

Judge Wulle later agreed to an Order of Censure from the Commission on Judicial Conduct for his conduct at the conference, in a Stipulation, Agreement and Order of Censure, which he signed on October 12, 2007. The Stipulation acknowledged that Judge Wulle's conduct was not only undignified and discourteous, but "created the appearance Respondent is biased or prejudiced, and thus undermined public confidence in his integrity and impartiality." As a consequence of Judge Wulle's behavior at that conference, the Presiding Judge of Clark County Superior Court removed Judge Wulle from hearing all matters involving juvenile therapeutic court and then all therapeutic courts. At the recent hearing before the Commission (in August 2012), Judge Wulle did not acknowledge or apologize for his conduct at the 2006 conference and said he signed the 2007 stipulation only on the advice of counsel.

C. General Conduct

At the August 2012 hearing, seven experienced members of the Clark County bar testified on Judge Wulle's behalf that Judge Wulle's demeanor on the bench, both before and after the 2006 incident, is generally "appropriate," "temperate," and "stern but fair." He was described as a "fine judge." With one exception, though, these lawyers were not present in court for the four incidents at issue in this case, and three of Judge Wulle's outbursts were directed at litigants unrepresented by counsel present for the hearing.

V. Violations of the Code of Judicial Conduct

Judge Wulle admitted that his conduct violated Canon 3(A)(3) of the 1995 Code of Judicial Conduct and Rule 2.8(B) of the 2011 Code of Judicial Conduct, and the panel agrees that he violated those provisions.

Judge Wulle did not admit, however, that his conduct violated Canons 1, 2(A), and 3(A)(2) of the 1995 Code of Judicial Conduct, or that it violated Rules 1.1 and 1.2 of the 2011 Code of Judicial Conduct, as charged by Disciplinary Counsel. We agree with Judge Wulle in part and with Disciplinary Counsel in part.

Under the plurality opinion of the Washington Supreme Court in *In re Disciplinary Proceeding Against Eiler*, 169 Wash. 2d 340, 236 P.3d 873 (2010), which we are bound to apply, "rude, discourteous, and impatient behavior" of the type that Judge Eiler engaged in "did not go so far as to undermine the integrity and independence of the judiciary, demonstrate disrespect for the law or evidence any failure by Judge Eiler to obey it or deny any person legally interested in a proceeding his or her full right to be heard according to law." *Id.* at 352. If the conduct established as to Judge Eiler's multiple violations "did not go so far" as to establish a violation of Canons 1 or 2 of the 1995 Code, the Commission is required to come to the conclusion that Judge Wulle's four instances of discourteous and demeaning behavior toward litigants likewise does not constitute a violation of Canons 1 or 2(A). That is not to say that the Commission approves of his behavior, or believes that it reflects well on the judiciary. And, in our view, Judge Wulle's conduct violated Canon 3(A)(2) of the 1995 Code, which provides that "Judges should maintain order and decorum in proceedings before them."

The Supreme Court's decision in *Eiler* involved an interpretation of the 1995 Code, not the 2011 Code of Judicial Conduct. The 2011 Code is different both in structure and in language in many ways, so a decision under the old Code does not necessarily provide binding authority regarding new language in the new Code. Rule 1.1 of the 2011 Code is entirely new. It says, "A judge shall comply with the law, including the Code of Judicial Conduct." Disciplinary Counsel argues, and we agree, that Rule 1.1 means that a violation of any other

Rule in the 2011 Code is also a violation of Rule 1.1. Thus, we conclude that Judge Wulle violated Rule 1.1 because he (admittedly) violated Rule 2.8(B) of the 2011 Code.

But the charge that Judge Wulle violated Rule 1.1 is not based on any independent or separate event from the four events discussed above. It is simply a request that we find two violations for each of the underlying events. Finding that the same conduct violates two rules does not mandate that the Commission treat a single act as if it were two acts.

As to Rule 1.2 of the 2011 Code, an argument can be made (and Disciplinary Counsel made it) that a violation of any other provision of the Code is also a violation of Rule 1.2. But that is not at all clear in the language of Rule 1.2 itself, which says, "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Though Comment [5] to Rule 1.2 says "Actual improprieties include violations of law, court rules, or provisions of this Code," the 2011 Code makes clear that "A judge may be disciplined only for violating a Rule." Scope [2]. This is not to say that the Comments that accompany the rules have no effect. They provide valuable guidance and identify aspirational goals for judges. Scope [3] and [4]. But the panel does not need to reach a conclusion as to whether Judge Wulle violated Rule 1.2 because this charge is not based on any independent or separate events from those charged under Rule 2.8 of the 2011 Code, and our view is that the technical resolution of this issue (how to interpret Rule 1.2 and Comment [5] to that rule) has no bearing on the appropriate remedy in this case.

VI. Remedy

In determining what sanction to impose, the Commission is guided by Commission on Judicial Conduct Rule of Procedure 6(d): "The sanction imposed by the commission shall be appropriate to the level of culpability. A sanction shall be sufficient to restore and maintain the

dignity and honor of the position and to protect the public by assuring that the judge will refrain from acts of misconduct in the future."

The Commission has concluded that the appropriate sanction in this case is a reprimand. Under the Commission's Rules of Procedure, a reprimand is appropriate where the Commission "finds that the conduct of the respondent is a violation of the Code of Judicial Conduct." Judge Wulle admitted that his conduct violated the 1995 and 2011 Codes, and the Commission's independent review of the evidence also found four instances in which he violated the Code of Judicial Conduct. A reprimand is considered an intermediate level of disciplinary action, above the level of an admonishment, but below the level of a censure (the prior discipline meted out to Judge Wulle), and below that of removal from office or suspension (which require approval of the Supreme Court).

In reaching the decision on the appropriate discipline, the Commission considered the non-exclusive mitigating and aggravating factors listed in Commission Rule of Procedure 6(c). In terms of the characteristics of the misconduct, as set forth in Rule 6(c)(1), the Commission considered the facts that the misconduct occurred in four separate events over the course of a two-and-a-half-year period; and that his behavior was "injurious to other persons" in those four instances in that it demeaned and humiliated the litigants appearing before him. The Commission found it especially troubling that the demeaning conduct in three of the instances was directed at litigants who were unrepresented by counsel, and included two juveniles and a litigant who spoke to the judge only through an interpreter. On the other hand, the testimony from the lawyers who practice in Clark County Superior Court was that Judge Wulle's typical demeanor over his 12 years on the Superior Court bench was stern but fair. There was no evidence that the judge flagrantly or intentionally violated the oath of office, or that he exploited the judge's official capacity to satisfy personal desires. In terms of the Rule 6(c)(2) factors

regarding service and demeanor of the judge, we considered the fact that the judge acknowledged that the acts occurred and he admitted to the Canon 3(A)(3) and Rule 2.8 violations; that the judge has an otherwise acceptable record of on-the-bench behavior over the past 12 years; and that Judge Wulle has taken some steps to try to change his conduct (seeking medical attention, meeting regularly with a mentor judge, and understanding that he needs to take more breaks).

On the other hand, the Commission censured Judge Wulle in 2007 for behavior at a juvenile court conference that he attended with a team from Clark County. Though the behavior underlying the 2007 censure has some similarities with the four cases at issue now (intemperate and unpredictable behavior, anger and discourtesy), in other ways the earlier conduct had a more serious impact on public confidence in Judge Wulle and the judiciary from Clark County, as it suggested bias and a lack of impartiality. But the fact of prior discipline alone does not require that today's discipline be identical in severity. The prior discipline is a relevant factor, but not dispositive. One factor in Rule 6(c)(2), the question of whether the judge's conduct complied with an ethics advisory opinion, was inapplicable. Finally, that Judge Wulle (through counsel) challenged the Commission process in a series of pre-hearing motions, which were denied, has not caused the Commission to enhance or otherwise alter the sanction and remedy entered by the Commission in this case.

Having weighed both the aggravating and the mitigating factors, a reprimand is the appropriate level of discipline. It will require Judge Wulle to appear, in person, before the Commission for the delivery of this decision. And, under the Commission's Rules, "a reprimand shall include a requirement that the respondent follow a specified corrective course of action." *See* Terminology section (definition of "Reprimand"). In this case, Judge Wulle is leaving his present office as of January 13, 2013. Although Judge Wulle testified that he has

taken some steps to change his behavior, his behavior is sufficiently unpredictable and explosive that he would benefit from further counseling. Therefore, the appropriate corrective course of action is that, before Judge Wulle takes any judicial position in the State of Washington (whether a permanent or pro tem position) after January 13, 2013, he must undergo an anger management evaluation and receive professional counseling on anger management to address the intemperate behavior evidenced in these four cases, provide proof of such evaluation and counseling to the Commission, and receive a certification of completion of such counseling from the Commission. The evaluation and counseling is to be at his own expense, and the identity of the evaluator/counselor must be provided to and pre-approved by the Chair of the Commission or his or her designee.

VII. Conclusion

Judge Wulle has stated, "One of the things that a judge is responsible for is creating order and dignity in a court of law..." Ex. 107. Unfortunately for the litigants who were the brunt of Judge Wulle's anger and discourteous comments, and for their family members who watched, Judge Wulle substantially failed on four occasions to fulfill this duty. On those four occasions, Judge Wulle's reaction to events in his courtroom had the result of making proceedings that had been orderly far less orderly and dignified. Given his overall record, the Commission has concluded that the reprimand and corrective action described above constitute a sufficient and appropriate remedy for his violations of the Code of Judicial Conduct.

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ORDER

Based on the foregoing Decision, the Commission finds that Judge Wulle has violated Canons 3(A)(2) and 3(A)(3) of the 1995 Code, and Rules 1.1, 2.8(A) and (B) of the 2011 Code of Judicial Conduct. Before Judge Wulle takes any judicial position in the State of Washington (whether a permanent or pro tem position) after January 13, 2013, he shall comply with the corrective course of action as set forth in Section VI of this Decision.

Dated this 14th day of December, 2012, *nunc pro tunc.*

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