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MAY 10 2013
COMMISSION ON JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

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4 In Re the Matter of:)
5 The Honorable Rick L. Porter,) CJC No. 7112-F-157
6 Judge of the Clallam County District Court I)
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STIPULATION, AGREEMENT
AND ORDER OF ADMONISHMENT

The Commission on Judicial Conduct and Rick L. Porter, Judge of the Clallam County District Court I in Port Angeles, stipulate and agree as provided herein. This stipulation is submitted pursuant to Article IV, Section 31 of the Washington Constitution and Rule 23 of the Commission's Rules of Procedure and shall not become effective until approved by the Washington Commission on Judicial Conduct.

I. STIPULATED FACTS

1. Judge Rick L. Porter (Respondent) is now, and was at all times referred to in this document, the sole judge of the Clallam County Court in Port Angeles. Respondent has served in that capacity since 2003.

2. Shortly after assuming office, Respondent implemented a system to review and enforce defendants' compliance with court-ordered fines and penalties (legal and financial obligations or "LFOs"). This system is referred to as "Pay or Appear." The program requires offenders who have LFOs to either make minimum monthly payments (typically \$50.00) towards their financial obligations or perform ten (10) hours of community service to be applied to their fines. Defendants who fail to pay their fines or perform their community service must appear on the first Friday of each month to explain why they could not pay their fines or do their community service. As long as they appear in court they are excused for that month. Individuals who fail to pay their fines, fail to do their community service, and then fail to appear for the Pay or Appear calendar will have a \$150.00 warrant issued for their arrest,

1 usually in their oldest case. Since Respondent is the only judge in that court, he generally
2 issues the warrants.

3 3. Until contacted by the Commission, the Clallam County District Court in Port
4 Angeles did not have an adequate process in place to ensure Respondent did not hear matters
5 during the Pay or Appear calendar, or sign warrants from that calendar, involving cases from
6 which Respondent was disqualified. In 2012, the Commission identified ten (10) instances
7 where Respondent signed warrants in cases where he had been disqualified by virtue of an
8 affidavit of prejudice having been filed.¹ They were all standard \$150.00 Pay or Appear
9 warrants.

10 4. In late June or early July 2012, a court clerk, who was assigned to the Pay or Appear
11 program, spoke to Respondent about her concerns that a defendant, Brenna M., had submitted
12 a document to the court falsely claiming she performed ten hours of community service to
13 satisfy a monthly LFO in a driving while license suspended case. The clerk also showed
14 Respondent a letter from the administrator of a non-profit organization in question that stated
15 that Ms. M. did not perform community service work for his organization. The clerk had
16 investigated the matter on her own, without Respondent's prior knowledge. The information
17 she verbally provided was given to Respondent in his judicial capacity, but was not part of the
18 record. Respondent did not personally engage in any investigation.

19 5. On July 3, 2012, Ms. M. was before Respondent to enter a change of plea to an
20 unrelated theft charge. Without disclosing he had received this off the record information from
21 his clerk, Respondent accepted Ms. M.'s guilty plea to the theft charge and heard sentencing
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23 ¹ An "affidavit of prejudice" is a statutory and rule-based process to disqualify one judge in any given
24 case. Pursuant to RCW 4.12.050 and CrRLJ 8.9(b), a party or an attorney may obtain a change of judge as a
25 matter of right by filing a motion, supported by an "affidavit of prejudice," alleging that the judge before whom
26 the action is pending is biased against that party or counsel and that the party feels it cannot have a fair trial before
that judge. If the affidavit is timely filed and presented, prejudice is deemed established and the judge must honor
it, whether or not the alleged bias is real or imagined. A party is entitled to one affidavit of prejudice per case.
Except in extraordinary circumstances not at issue here, a disqualified judge is precluded from taking further
substantive action in the case.

1 argument from counsel and the defendant. As he was imposing sentence, Respondent revealed
2 he had received this information relevant to her other case. Ms. M. denied the allegations and
3 the matter was set for an adjudication hearing. When imposing the sentence Respondent
4 referenced the alleged fraudulent community service hours to justify, in part, the sentence he
5 imposed for Ms. M.'s theft, creating at least the perception that Respondent's sentence was
6 influenced by the ex parte communications.²

7 6. Respondent appointed counsel on the new allegations and disclosed the contents of
8 the letter and the conversation with the clerk. After a brief discussion, Respondent set the
9 matter over for a show cause hearing to give the defendant and her counsel an opportunity to
10 respond to the allegations.

11 7. At that next hearing, Ms. M. provided the court with a plausible explanation that the
12 community service hours she submitted were legitimate. The court gave her the benefit of the
13 doubt and dropped the matter. A few days later, the same clerk spoke to Respondent again and
14 provided additional non-record information about the person who verified Ms. M.'s
15 community service hours, and another letter signed by two more witnesses associated with the
16 non-profit organization, stating that Ms. M. did not do the community service work on the days
17 she claimed. In light of the new information, Respondent revoked Ms. M.'s bail and ordered
18 her held without bail pending the adjudication hearing previously set. Ms. M. was
19 subsequently released from custody on a \$450.00 bail by a superior court judge, pending her
20 next hearing. At that hearing, after considering testimony from all witnesses, Respondent
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22 ² Respondent maintains he did not in fact consider this ex parte information when formulating Ms. M.'s
23 sentence for theft. Respondent acknowledges, however, his comments could create a reasonable perception that
24 he considered the information. Given Ms. M.'s extensive criminal history, including prior warrants and
25 substantial LFOs, the Commission does not dispute the sentence Respondent imposed was well within his
26 discretion. The pertinent sentencing comment was: "The recommendation on the charge that we've just been,
you just pled guilty to recommended that you do community service work, which I'm clearly not going to allow.
Given the fact that you've filed false doc... or the allegation is, which has been substantiated by a number of folks
here, uh, filing false documents. We're not going to do that. We're going to impose a determinative sentence of
jail time of 30 days. And you're going to go with [a courtroom security officer] now."

1 found Ms. M. was in willful non-compliance with her pay or appear requirements by
2 submitting a document that falsely claimed she had completed ten (10) hours of community
3 service work. As a result, Respondent converted her outstanding fines to jail time and gave her
4 credit for time served.³

5 II. AGREEMENT

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

7 1. *Disqualification and Signing Bench Warrants*

8 a) Respondent agrees that signing bench warrants in cases in which the
9 Respondent had been disqualified violated Canon 1 (Rule 1.1 and 1.2) and Canon 2 (Rule 2.11)
10 of the Code of Judicial Conduct.

11 b) Rules 1.1 and 1.2 require judges to uphold the integrity of the judiciary by
12 avoiding impropriety and the appearance of impropriety and by acting at all times in a manner
13 that complies with the Code and that promotes public confidence in the independence, integrity
14 and impartiality of the judiciary. Rule 2.11 requires judges to disqualify themselves in any
15 proceeding in which the judge's impartiality might reasonably be questioned.

16 c) In each of the ten specific cases identified by the Commission,
17 disqualification was established by an effective affidavit of prejudice. Except under limited
18 circumstances not present here, a judge may not make rulings or issue orders in any case in
19 which the judge has been disqualified. Granting continuances at a Pay or Appear calendar and
20 issuing bench warrants for failure to appear at that calendar are routine and largely ministerial
21 acts, but they are discretionary judicial acts. Although there is no indication Respondent took
22 action on cases in which he knew he was disqualified, and case law suggests that judges are not
23 presumed to know that there is an affidavit of prejudice in any given file, Respondent
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25 ³ The Commission takes no position on the propriety of Respondent pursuing this matter as civil contempt,
26 as that is a legal issue beyond the purview of this disciplinary matter. But, the Commission will note in this
context, holding a defendant without bail pre-adjudication of an alleged civil contempt is an additional factor
creating an appearance of partiality.

1 recognizes that the concerns identified herein are systemic, and that he was the person who
2 introduced and structured the Pay and Appear system in the court without accounting for the
3 need to identify and screen cases in which he was prohibited from acting. This resulted in a
4 routine pattern and practice of the Respondent failing to honor litigants' statutory and rule-
5 based rights to disqualify a judge by means of filing an affidavit of prejudice.

6 *2. Ex Parte Communications and Appearance of Partiality*

7 a) Respondent agrees that not disclosing ex parte communications to Ms. M. or
8 her attorney in the circumstances described above is a violation of Canon 1 (Rules 1.1 and 1.2)
9 and Canon 2 (Rule 2.9) of the Code of Judicial Conduct. Respondent further agrees those
10 actions, coupled with his comments appearing to rely on this unadjudicated information when
11 imposing sentence for Ms. M.'s theft and when revoking her bail, also transgresses Canon 2
12 (Rule 2.2) of the Code.

13 b) Rule 2.9 says that a judge shall not consider ex parte communications, or
14 consider other communications made to the judge outside the presence of the parties or their
15 lawyers, concerning a pending matter. Rule 2.2 requires judges to perform all duties of judicial
16 office fairly and impartially.

17 c) In this case, Respondent received unsolicited factual assertions from a court
18 clerk while acting in his official capacity, which were not part of the official record. While
19 judges are permitted to consult with court staff, they must avoid receiving factual information
20 that is not part of the record. When a judge inadvertently receives such factual information, the
21 parties should be informed of the information and given an opportunity to respond.
22 Respondent notes that this was an unusual case and the first time he had to deal with what he
23 believed to be a fraudulent report of community service. Respondent recognizes, however, that
24 he should have disclosed the ex parte communications to Ms. M.'s counsel on the unrelated
25 charge, prior to imposing her sentence. Failing to disclose this information and apparently
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1 relying on the non-record information undermined the apparent fairness of Ms. M.'s
2 proceedings.

3 **B. Imposition of Sanction**

4 1. In determining the appropriate level of sanction to impose in any case, the
5 Commission must consider the non-exclusive factors set out in Rule 6(c) of its Rules of
6 Procedure.

7 a) Characteristics of the Violation

8 1. *Disqualification and Signing Bench Warrants*

9 The concerns identified herein were systemic and existed since Respondent
10 implemented the Pay or Appear program. The nature of the violation concerns respecting an
11 individual's statutory right to file an affidavit of prejudice. The violations occurred in the
12 courtroom and in Respondent's official capacity. These considerations are balanced by the
13 following mitigating factors, however. Respondent introduced the Pay or Appear program in
14 order to improve efficiency for the defendants and the court. It appears to be an effective
15 program that has been adopted by other courts. Overall, the Pay or Appear program reflects
16 positively on the Respondent's service. The violations appear to have resulted from oversight
17 and were unintentional. Respondent was not specifically aware of the issue raised in this
18 matter when he issued the warrants. He maintains the issue was not brought to his attention by
19 attorneys or his staff, and case law states that judges are not presumed to know that an affidavit
20 exists in any given file. Respondent corrected the deficiency in the system as soon as it was
21 brought to his attention by the Commission. In 2012, out of thousands of warrants signed by
22 the Respondent, the ten warrants identified here were unremarkable and most likely would
23 have been issued by a pro-tem judge. Thus, it is difficult to find any individual was
24 particularly harmed. Finally, the negative effects the misconduct has had, if any, are mitigated
25 by the unintentional and relatively technical nature of the transgression.

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3. Based on the forgoing considerations, the Respondent and the Commission agree to the imposition of an admonishment. An "admonishment" is not intended to be punitive in nature, but rather, it is a written action of the Commission that is of an advisory nature that cautions the Respondent to avoid similar actions in the future. An admonishment is the least severe disciplinary action the Commission can issue.

4. The Respondent agrees to be mindful of the potential threat to public confidence and impartiality of the judiciary and to the administration of justice.


5. The Commission is satisfied Respondent understands the law and the Code relative to the issues discussed here and its importance to ensuring the integrity of the judiciary.

Standard Additional Terms and Conditions

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


7. Respondent acknowledges and represents that he either consulted or has had an opportunity to consult with counsel of his choosing regarding this stipulation and proceeding. Respondent represents that he voluntarily enters into this agreement.

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



Hon. Rick Porter
Clallam County District Court Judge

Date 9 May 2017



Reiko Callner
Executive Director
Commission on Judicial Conduct

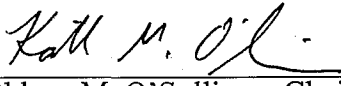
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AGREED ORDER

Based on the above Stipulation and Agreement, the Commission on Judicial Conduct admonishes Judge Rick Porter for the above set forth violations of the Code of Judicial Conduct.

DATED this 10th day of May 2013.



Kathleen M. O'Sullivan, Chair
Commission of Judicial Conduct