

FILED  
JUL 17 2015  
COMMISSION ON JUDICIAL CONDUCT

1  
2 **BEFORE THE COMMISSION ON JUDICIAL CONDUCT**  
3 **OF THE STATE OF WASHINGTON**

4 In Re the Matter of: )  
5 ) CJC No. 7772-F-166  
6 The Honorable C. Kimi Kondo, )  
7 Judge of the Seattle Municipal Court )  
8 ) **STIPULATION, AGREEMENT AND**  
9 ) **ORDER OF ADMONISHMENT**

10 Pursuant to Article IV Section 31 of the Washington State Constitution and Rule 23 of the  
11 Commission on Judicial Conduct Rules of Procedure, the Commission on Judicial Conduct and C. Kimi  
12 Kondo, Seattle Municipal Court Judge, do hereby stipulate and agree as provided for herein.

13 **I. STIPULATED FACTS**

14 A. Judge C. Kimi Kondo ("Respondent") has been a Seattle Municipal Court Judge since  
15 1990, and has been that court's presiding judge since January 2012.

16 B. *City v. A.E. (Cause No. 568172).*

17 1. On April 7, 2014, Respondent presided over a final review hearing in a criminal  
18 traffic case, *City v. A.E.*. This hearing was scheduled to determine whether the defendant had satisfied  
19 the conditions of his sentence. Just prior to the hearing, a city prosecutor who was not assigned to the  
20 *A.E.* case sent an unsolicited email to Respondent concerning an unrelated domestic violence assault  
21 case (*City v. D.W.*) set for trial before a different Seattle Municipal Court judge. The prosecutor wrote  
22 that she "had reason to believe" that defendant A.E.'s attorney of record, who was the victim/witness  
23 in *City v. D.W.*, was avoiding service of a subpoena for trial, and the prosecutor asked if Respondent  
24 could inquire why the attorney was not present for the scheduled review hearing that morning:

25 *Dear Judge Kondo, I have reason to believe that [the attorney for A.E.] is avoiding*  
26 *personal service of a subpoena in a case I have set for trial. She is the attorney of*  
27 *record on the [A.E. matter], which is scheduled for 9 AM this morning in 1002*  
28 *[Respondent's courtroom]. She has sent a coverage attorney to handle the matter. I*  
*would like to ask the court if you can inquire about the nature of her conflict and why*  
*[she] is not here today. She appeared at the last hearing and was supposed to be here*  
*today. Please let me know if this is something you can do. If not, I understand. Thank*

1           you so much, [Prosecutor]

2           2.       Minutes later Respondent replied to the prosecutor's email:

3           *Who is outside prosecutor. . . . Isn't this an ethics violation to avoid service? Can the*  
4           *service be made to her colleague? Maybe you should come over and talk to the*  
5           *colleague or be outside with the outside prosecutor so [the] court doesn't get too*  
6           *involved.*

7           3.       Respondent then heard the *City v. A.E.* review matter. Although all parties  
8           agreed the defendant was in compliance with his sentence, which would have concluded his case that  
9           day, Respondent nonetheless continued the hearing one week to require the attorney of record to be  
10          present in court, noting there might be some "ethics issues" involved.

11          4.       During a break in the proceedings (as the coverage attorney attempted to contact  
12          defendant A.E.'s attorney of record), Respondent sent another email to the prosecutor, stating in part:

13          *I just told [the coverage attorney] I want [the attorney of record] here later in the*  
14          *morning. She is going outside to call her. Your outside prosecutor should be the one*  
15          *insisting on her presence not really me.*

16          5.       Shortly after the hearing, Respondent and the prosecutor had another email  
17          exchange. The prosecutor first wrote to Respondent:

18          *Judge Kondo, Thank you for your assistance with this matter. I talked a little bit with*  
19          *[two other city prosecutors] prior to sending the email. I will research avoiding service*  
20          *as an ethical violation. I should have more information by next week. [Prosecutor]*

21          And Respondent replied:

22          *I told other judges and magistrates about this issue. Told them to be on look out for*  
23          *stand in counsel. You might want to consider having staff who is trying to serve her*  
24          *prepare a sworn declaration under penalty of perjury outlining attempts to serve and*  
25          *why you believe she is trying to avoid. Then have that in court next Monday if she [fails*  
26          *to appear] and tries to get another colleague to come in Monday. That way we can*  
27          *keep requiring her presence.*

28          6.       The initial email from the prosecutor was addressed to Respondent and two court  
employees; the remaining emails were only between Respondent and the prosecutor. No defendants  
or defense attorneys were included or copied in the emails referenced above.

7.       Prior to the rescheduled hearing, defendant A.E. changed attorneys. During that  
hearing, defendant A.E.'s new attorney questioned why this routine matter was continued without  
apparent justification, pointing out that A.E. had to lose a day of work in order to attend an additional  
final review hearing for reasons unrelated to his own case. Although Respondent ultimately agreed that

1 issues involving the prior attorney as a witness in an unrelated case should be addressed in that other  
2 case by the judge hearing that case, she nonetheless invited the prosecution to “make a record” in  
3 support of its position that the witness/attorney had acted unethically by apparently avoiding service  
4 of a subpoena. Respondent then addressed the merits of the review hearing and found defendant A.E.  
5 in compliance with his sentence, resulting in the closure of his case.

6 C. *City v. D.W. (Cause No. 594683).*

7 1. The defense attorney in *City v. D.W.* subsequently learned from colleagues that  
8 the actions of the witness/attorney in the *City v. D.W.* case were addressed in case proceedings in *City*  
9 *v. A.E.*. Through his own efforts, he obtained copies of the above-described email communications  
10 between Respondent and the city prosecutor. Based on that information, the defense attorney moved  
11 to (1) recuse all Seattle Municipal Court judges, (2) change venue away from Seattle Municipal Court,  
12 (3) disqualify the prosecutor and (4) dismiss for governmental misconduct on the part of both the  
13 prosecutor and Respondent. The assigned judge heard argument on the motions and granted the  
14 defendant’s motion to change venue without deciding the other issues, so that those issues could be  
15 decided by a judge not on the Seattle Municipal Court bench.<sup>1</sup> Following the change of venue, the City  
16 dismissed the case outright.

17  
18 **II. AGREEMENT**

19 **A. Respondent’s Conduct Violated the Code of Judicial Conduct**

20 1. Based upon the above stipulated facts, Respondent agrees she violated Canon  
21 1 (Rules 1.1 and 1.2) and Canon 2 (Rules 2.2 and 2.9) of the Code of Judicial Conduct.

22 (a) Canon 1 of the Code of Judicial Conduct expresses the core obligations  
23 of the Code that judges must uphold and promote the independence, integrity and impartiality of the  
24 judiciary and avoid impropriety and the appearance of impropriety. Rule 1.1 specifies, “A judge shall  
25 comply with the law, including the Code of Judicial Conduct.” Rule 1.2 provides, “A judge shall act  
26

---

27 1/ Despite the statement in Respondent’s email that she had notified her benchmates about the attorney/witness issue,  
28 Respondent told the Commission that she did not, in fact, widely share her concerns, and did not share her concerns with  
the judge who presided over *City v. D.W.*

1 at all times in a manner that promotes public confidence in the independence, integrity, and impartiality  
2 of the judiciary, and shall avoid impropriety and the appearance of impropriety.”

3 (b) Canon 2 of the Code of Judicial Conduct addresses adjudicatory  
4 functions, mandating that the duties of judicial office must be performed impartially, competently and  
5 diligently. Rule 2.2 provides, “A judge shall uphold and apply the law, and shall perform all duties of  
6 judicial office fairly and impartially.” Rule 2.9 provides in part, “A judge shall not initiate, permit or  
7 consider ex parte communications, or consider other communications made to the judge outside the  
8 presence of the parties or their lawyers, concerning a pending or impending matter, before that judge’s  
9 court. . . .”

10 2. Though she did not so perceive it at the time of writing, Respondent now agrees  
11 that the substance of her private email communications with a city prosecutor regarding the purported  
12 actions of the witness in *City v. D.W.*, and her resulting actions of continuing the review hearing in *City*  
13 *v. A.E.* on her own in order to require the presence of this witness/attorney, created an appearance of  
14 partiality toward the prosecution in violation of Rules 1.1, 1.2 and 2.2. She further agrees that this  
15 communication, which concerned a case pending in the Seattle Municipal Court, constituted prohibited  
16 ex parte communication in violation of Rules 1.1, 1.2 and 2.9 of the Code.

17 **B. Imposition of Sanction**

18 1. The sanction imposed by the Commission must be commensurate to the level of  
19 Respondent’s culpability, sufficient to restore and maintain the public’s confidence in the integrity of  
20 the judiciary, and sufficient to deter similar acts of misconduct in the future.

21 2. In determining the appropriate level of discipline to impose, the Commission  
22 takes into account those factors listed in CJCRP 6(c):

23 *Whether the misconduct is an isolated incident or evidence of a pattern of misconduct.*

24 The Commission’s investigation has revealed no prior similar conduct. Witnesses interviewed by the  
25 Commission in this investigation said they did not have the impression Respondent generally tends to  
26 favor either the prosecution or defense unduly.

27 *The nature, extent, and frequency of occurrence of the acts of misconduct.* While  
28 multiple ex parte emails were exchanged, and Respondent’s actions were affected by those

1 communications, this conduct was all related to a single set of circumstances. Respondent has  
2 explained that, in her judicial service, she had previous knowledge of conduct on the part of the  
3 witness/attorney that led her to question that person's ethical conduct. When the prosecutor sent  
4 Respondent an email saying she had "reason to believe" the witness/attorney was avoiding subpoena  
5 service, Respondent explains that she was immediately concerned, as the presiding judge of the court,  
6 that an attorney practicing in her court was undermining the administration of the justice system, and  
7 her reaction was guided by that. Respondent says she consciously reflected that she was not the judge  
8 on the case involving the subpoena, and felt that she was acting administratively, not substantively, in  
9 communicating with the prosecutor and in attempting to direct the presence of the witness/attorney.  
10 At the time of her action, Respondent explains her reading of the rule indicated her actions were  
11 acceptable under the rule. It was only after discussion with Commission staff and their discussion of  
12 the derivation of the language in the 2011 Code, that in retrospect she recognized that regardless of her  
13 intentions, the email communications were, in fact, sent and considered in violation of Rule 2.9(A).<sup>2</sup>

14 *Whether the misconduct occurred in the judge's official capacity or in the judge's*  
15 *private life and whether the judge flagrantly or intentionally violated the oath of office.* The conduct  
16 occurred in the judge's official capacity, but there is no indication that she violated her oath of office  
17 nor that she exploited her official capacity to satisfy personal desires. Respondent has stated that she  
18 cares deeply about the integrity of the court. By entering into this stipulation, Respondent agrees it may  
19 be helpful to other judicial officers to clarify the language in Rule 2.9(A), since judges are not typically  
20 expected to be familiar with legislative history of the Code, and further, to acknowledge the risks if a  
21

---

22 2/ As noted, Rule 2.9 requires that a judge not "initiate, permit, or consider ex parte communications . . . made to the  
23 judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, before that judge's  
24 court . . ." Respondent explained she read the qualifying language, "before that judge's court" to refer to the judge's  
25 individual courtroom, not the court in which the judge serves (i.e. here, the Seattle Municipal Court). But application of the  
26 ex parte rule has never been limited to matters being heard on the particular judge's docket. The qualifying language "before  
27 that judge's court" was added to the 2011 Code and is particular to Washington State. The Commission notes that legislative  
28 history of the rule indicates that the language was adopted to avoid penalizing judges if they discuss pending cases that  
cannot be influenced by the judge – such as notorious cases taking place in another country - and that would never  
reasonably be anticipated to come before the judge. The ex parte restriction does, however, cover cases heard in a judge's  
own court jurisdiction, as those cases may well come before the judge or be influenced by the ex parte communication. In  
addition, with respect to Respondent's belief that she was acting administratively, even if the communications at issue here  
did not concern substantive issues, the administrative exception to the ex parte rule identified in Rule 2.9(A)(1) requires a  
judge to promptly disclose the ex parte communication, which was not done.

1 judge responds reactively to an assertion that someone is attempting to defraud the court or to otherwise  
2 subvert the administration of justice.

3 *The nature and extent to which the acts of misconduct have been injurious to others.*

4 Defendant A.E. was not afforded the timely closure of his case, despite having proof that he had  
5 satisfied the court's conditions. His case was continued for a week, requiring him to lose an additional  
6 day of work, and, since he knew nothing of the court's actual concerns, he discharged one defense  
7 attorney and had to engage another to ensure that he was not in further jeopardy. Though Respondent  
8 has credibly maintained that she was motivated by addressing potential attorney misconduct, she  
9 realizes her conduct could reasonably create the impression that she was failing to be impartial and  
10 permitting the prosecution to improperly influence her. A judicial officer should be especially cautious  
11 when asked to respond reactively to an intimation that some form of fraud is being perpetuated on the  
12 court. The prosecutor seeking service on the witness/attorney could have taken any number of  
13 measures on her own behalf. Her concerns that an attorney was committing an ethics violation could  
14 have been referred to the Bar disciplinary authority, all without entangling the court.

15 *Service and demeanor of the judge.* By entering into this agreement, Respondent has  
16 accepted responsibility for her conduct and has demonstrated an understanding of the issues so as to  
17 avoid repeating the behavior that led to this disciplinary action. She has fully cooperated with the  
18 Commission throughout these proceedings. Respondent has been a judicial officer for twenty-five  
19 years and has had no prior judicial misconduct history.

20 3. Weighing and balancing the above factors, Respondent and the Commission  
21 agree that Respondent's stipulated misconduct shall be sanctioned by the imposition of an  
22 "admonishment." An "admonishment" is a written action of the Commission of an advisory nature that  
23 cautions a respondent not to engage in certain proscribed behavior. An admonishment may include a  
24 requirement that the respondent follow a specified corrective course of action. Admonishment is the  
25 least severe disciplinary action the commission can issue.

26 4. Respondent agrees she will promptly read and familiarize herself with the Code  
27 of Judicial Conduct in its entirety and provide written confirmation to the Commission within one  
28 month from the date this stipulation is entered.

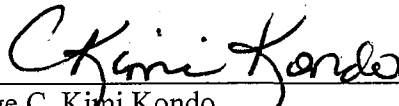
1 Standard Additional Terms of Commission Stipulation

2 5. Respondent further agrees she will not retaliate, or appear to retaliate, against  
3 any person known or suspected to have cooperated with the Commission, or otherwise associated with  
4 this matter.

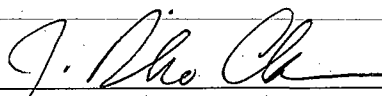
5 6. Respondent agrees she will not repeat such conduct in the future, mindful of the  
6 potential threat any repetition of her conduct poses to public confidence in the integrity and impartiality  
7 of the judiciary and to the administration of justice.

8 7. Respondent has represented herself in these proceedings; she affirms she has had  
9 an opportunity to consult with counsel prior to entering into this stipulation.

10 8. Respondent agrees that by entering into this stipulation and agreement, she  
11 hereby waives her procedural rights and appeal rights pursuant to the Commission on Judicial Conduct  
12 Rules of Procedure and Article IV, Section 31 of the Washington State Constitution in this proceeding.

13  
14  
15  
16   
17 \_\_\_\_\_  
18 Judge C. Kimi Kondo  
19 Respondent

20 7/10/15  
21 \_\_\_\_\_  
22 Date

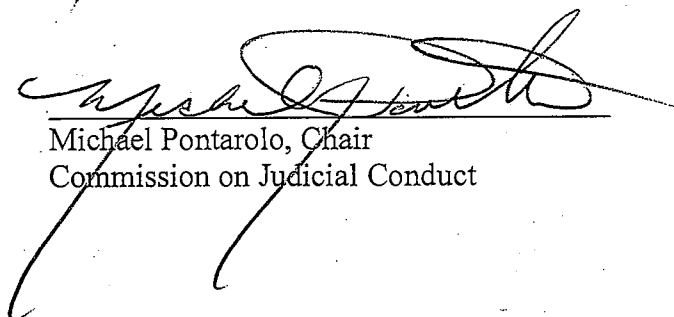
23  
24  
25  
26   
27 \_\_\_\_\_  
28 J. Reiko Callner  
Executive Director  
Commission on Judicial Conduct

7-13-15  
\_\_\_\_\_  
Date

1  
2 **ORDER OF ADMONISHMENT**

3 Based upon the above stipulation and agreement, the Commission on Judicial Conduct hereby  
4 orders Respondent, Judge C. Kimi Kondo, ADMONISHED for violating Canon 1, Rules 1.1 and 1.2,  
5 and Canon 2, Rules 2.2 and 2.9, of the Code of Judicial Conduct. Respondent shall not engage in such  
6 conduct in the future and shall fulfill all of the terms of the Stipulation and Agreement as set forth  
7 therein.

8  
9 DATED this 17<sup>th</sup> day of July, 2015.

10  
11  
12   
13 Michael Pontarolo, Chair  
14 Commission on Judicial Conduct  
15  
16  
17  
18