

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

In Re the Matter of)
The Honorable Anthony S. Parise)
Commissioner of the)
Whatcom County District Court)

CJC No. 8080-F-169

**STIPULATION, AGREEMENT
AND ORDER OF ADMONISHMENT**

The Commission on Judicial Conduct and the Honorable Anthony S. Parise, Commissioner of the Whatcom County District Court, 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

A. Commissioner Anthony Parise (Respondent) is now, and was at all times referred to in this document, a Whatcom County District Court Commissioner. Respondent has served in that judicial capacity since 2003.

B. On November 25, 2015, Respondent presided over a contested, non-criminal traffic infraction hearing, *State v. Ruan*, Cause No. 5Z0751192. At the outset of the hearing, the defendant stated he had attempted to have the citing officer subpoenaed, but the officer was not present, and the defendant believed he was therefore entitled to have the ticket dismissed, as he said had been his experience in his home country, Canada. Respondent correctly told him he had not followed the proper procedure to have the officer subpoenaed. Respondent then said they were going to proceed that day, with the officer's testimony presented by his sworn statement on the ticket. After the prosecution presented its case (which consisted of the officer's incident report and attachments), the defendant indicated he wished to testify and was willing to affirm to tell the truth, but for religious

1 reasons he said he would not raise his right hand when giving his affirmation. Respondent explained
2 that he required all witnesses to "raise their hand and just affirm that they understand the seriousness
3 of the testimony that they are offering and that it needs to be true." The defendant repeated that he
4 wished to testify, but insisted the act of raising his "right hand to heaven" offended his religious
5 beliefs and that forcing him to do so in order to testify was an abuse of the court's authority.
6 Because the defendant would not raise his hand, Respondent instructed him to leave the witness
7 stand, and did not allow him to testify. In the absence of the defendant's testimony, Respondent
8 thereafter found the infraction committed.

10 **II. AGREEMENT**

11 **A. Respondent's Conduct Violated the Code of Judicial Conduct.**

12 1. Based upon the foregoing stipulated facts, Respondent agrees he violated Canon 1
13 (Rules 1.1 and 1.2) and Canon 2 (Rules 2.2 and 2.6(A)) of the Code of Judicial Conduct by not
14 allowing a defendant to testify solely because the defendant would not raise his hand when affirming
15 to tell the truth.

16 2. Rules 1.1 and 1.2 require judges to respect and comply with the law and to act at all
17 times in a manner that promotes public confidence in the independence, integrity, and impartiality
18 of the judiciary, and to avoid impropriety and the appearance of impropriety. Rule 2.2 requires
19 judges to uphold and apply the law, and to perform all duties of judicial office fairly and impartially.
20 Rule 2.6(A) states that judges shall accord every person who has a legal interest in a proceeding the
21 right to be heard according to law.

22 3. In the case underlying this disciplinary matter, the defendant was entitled to be sworn
23 in to testify in the manner he requested – without raising his hand – based upon his religious
24 objection to raising his right hand. Respondent's failure to accommodate the defendant's religious
25 position was contrary to well-established law, infringed upon his constitutional right to free exercise
26 of religion, and resulted in the defendant being denied his right to testify in his own defense and be

1 heard according to law.¹

2 **B. Sanction.**

3 1. In determining the appropriate level of sanction, the Commission takes into account
4 the aggravating or mitigating factors listed in CJCRP 6(c). Factors tending to aggravate the
5 sanction in this case include: the misconduct occurred in the courtroom and was committed in
6 Respondent's official capacity. Respondent's actions deprived a litigant of his right to testify in his
7 own defense and infringed upon that person's religious freedom. (That reality was compounded by
8 the impression the litigant had that he was being disadvantaged by the failure to have the officer
9 present to testify, even though the litigant had not followed the correct procedure to require the
10 officer's presence.) The misconduct was injurious to the litigant and more broadly undermined core
11 principles of our justice system. On the other hand, in mitigation, this appears to have been an
12 isolated incident. Respondent maintains, and the Commission has no information indicating
13 otherwise, that this was the first time in over twenty-two years as an attorney and judicial officer that
14 he has confronted a situation where a witness refused to raise their hand when being put under oath.
15 Respondent has plausibly explained that this was an unintentional, and not flagrant, violation. He
16 wrote that he had not previously considered the religious significance of raising one's hand when
17 taking an oath, and that at the time of the hearing in question, he made an honest, good faith error
18 in applying an evidentiary rule. Respondent further advised the Commission that after the subject
19 hearing, and prior to the Commission contacting him, he researched the issue and concluded he had
20 erred and consequently has changed his practice to conform to the law. There is no indication that
21 the misconduct involved violation of his oath of office, or that Respondent exploited his official

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23 ¹ Before testifying, every witness must declare that the witness will testify truthfully by oath or affirmation. (ER 603.)
24 No particular form of oath or affirmation is required, however, only that it be administered in a form calculated to impress upon
25 the witness the duty to tell the truth and the consequence(s) of failing to do so. (Id.) Judicial officers have considerable
26 discretion how to administer oaths and affirmations. That discretion is designed to accommodate a witness' religious or
conscientious scruples. (See RCW 5.28.020 - .050.) It is well-established that a court's interest in administering a precise form
of oath must yield to a witness' First Amendment rights and that it is error for a court to prevent a party from testifying solely on
the basis of the party's religiously-based objections to the form of the oath. See, e.g., Gordon v. Idaho, 778 F.2d 1397 (9th Cir.
1985)(a witness need not raise their hand when put under oath at a deposition if to do so infringes on sincerely-held religious
beliefs); United States v. Ward, 989 F.2d 1015 (9th Cir 1992) (collecting cases).

1 position to satisfy personal desires. In addition, Respondent's actions in response to this matter have
2 been exemplary. He has cooperated fully with the Commission, has acknowledged the impropriety
3 of his actions and has expressed a clear understanding of the issues such that his assurances of not
4 repeating the misconduct and expressions of remorse and contrition seem genuine. Respondent has
5 served as a court commissioner for 13 years. He is generally regarded as a conscientious judicial
6 officer. He was, however, previously disciplined in 2013 for inappropriate demeanor during a
7 hearing in January 2013.²

8 2. Weighing and balancing the above factors, Respondent and the Commission agree that
9 an admonishment is the appropriate level of sanction to impose in this matter. An "admonishment"
10 is a written action of the Commission of an advisory nature that cautions a respondent not to engage
11 in certain proscribed behavior. An admonishment may include a requirement that the respondent
12 follow a specified corrective course of action. Admonishment is the least severe disciplinary action
13 available to the Commission.

14 3. Respondent agrees that he will promptly read and familiarize himself with the Code
15 of Judicial Conduct in its entirety.

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

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

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

24 7. Respondent further agrees that he will not retaliate against any person known or
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26 ² In re Parise, CJC No. 7292-F-155 (October 4, 2013).

1 suspected to have cooperated with the Commission, or otherwise associated with this matter.

2
3 Anthony S. Parise
4 Honorable Anthony S. Parise
5 Whatcom County District Court

7/6/16
Date

6
7 J. Reiko Callner
8 J. Reiko Callner
9 Executive Director
10 Commission on Judicial Conduct

7-11-16
Date

