

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

FILED
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COMMISSION ON JUDICIAL CONDUCT

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| In Re the Matter of:) The Honorable David A. Svaren) Judge of the Skagit County Superior Court) <hr style="width: 100%;"/> |) | CJC No. 8348-F-182 STIPULATION, AGREEMENT AND ORDER OF ADMONISHMENT |
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The Commission on Judicial Conduct (“Commission”) and Judge David A. Svaren (“Respondent”) hereby stipulate and agree as provided for herein. This stipulation is entered pursuant to Article IV, Section 31 of the Washington Constitution and Rule 23 of the Commission on Judicial Conduct Rules of Procedure.

The Commission is represented in these proceedings by its Executive Director, J. Reiko Callner, and Judge Svaren represented himself.

I. STIPULATED FACTS

A. Respondent is currently a judge of the Skagit County Superior Court. He was elected to the superior court in November 2016. Previously, and at the time of the conduct described herein, he was a judge of the Skagit County District Court, having served on that court since 1999.

B. Respondent maintains a Facebook page, titled “Judge David Svaren.”

C. On October 1, 2016, Respondent attended a “pancake feed” fundraiser, held to benefit families of victims killed on September 23, 2016, during a mass shooting that occurred at the Cascade Mall in Burlington, Skagit County, Washington. Respondent posted to his Facebook page two photos of signs at the event with text that read: "The Burlington Fire Department Pancake Feed is happening now and 100% of the proceeds go to benefit the families of the victims of the recent tragedy at Cascade Mall. Please consider attending, it runs until noon today."

D. Pursuant to CJCRP 17(c), after independently investigating complaints concerning Respondent's Facebook posts, the Commission on Judicial Conduct initiated disciplinary proceedings against Respondent by serving him with a Statement of Allegations on June 7, 2018. The Statement of Allegations alleged that the post described above constituted an impermissible solicitation for monetary contributions to a charity, in violation of Canon 1 (Rules 1.1 and 1.3) and Canon 3 (Rule 3.7(B)) of the Code of Judicial Conduct.

E. By letters dated June 27 and July 16, 2018, Respondent answered the Statement of Allegations. In his answers, Respondent acknowledged that he made the Facebook post in question. Respondent also acknowledged that he is aware the Code of Judicial Conduct prohibits such fundraising by judicial officers and stated that he had taken steps in the past to avoid doing so. Respondent noted that, within a few weeks of the post at issue here, he reviewed his Facebook page and realized that the post in question may violate the Code and removed it. Respondent was unable to recall or explain why he had failed to recognize this post would violate the Code at the time he made it.

II. AGREEMENT

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

1. Based upon the above stipulated facts, Respondent agrees that he violated Canon 1, Rules 1.1 and 1.3 and Canon 3, Rule 3.7(B), of the Code of Judicial Conduct.

2. Rule 1.1 Code of Judicial Conduct requires judges to "comply with the law, including the Code of Judicial Conduct." Rule 1.3 provides "A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so." Rule 3.7(B) allows judicial officers to participate in charitable organizations, but states that judges may solicit contributions for such organizations "... only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority...."

3. Respondent agrees that his post encouraging members of the public to attend the charity pancake feed was a solicitation for funds, and thus violated the foregoing Code provisions.

4. The prohibition against judicial solicitation of money does not reflect on the worthiness or virtue of the charity or cause in question. With a few specific exceptions, the Code of Judicial Conduct has a bright line rule against a judge soliciting funds – no matter how noble the case – in order to avoid misuse of the judicial office.¹ While a Facebook post presents no obvious element of coercion, it is still an abuse of the prestige of judicial office, which is appropriately reserved for the service of the office itself, and not to be used for the individual benefit of the judge or others, regardless how generally good the cause may be. A near blanket prohibition upon fundraising by judicial officers is necessary as it would be impossible to exercise principled distinctions based on the nature of the charity involved, and it would be improper to have a government agency such as a conduct commission make such value choices.

B. Imposition of Sanction

1. The sanction imposed by the Commission must be commensurate to the level of Respondent's culpability, sufficient to restore and maintain the public's confidence in the integrity of the judiciary, and sufficient to deter similar acts of misconduct in the future. There are many mitigating factors for this type of Code violation - fundraising for a charity is generally inherently good. The prohibitions against fundraising as a judge are peculiar to the special demands of the office of judge. The prime directive of the Code of Judicial Conduct is articulated in the Code's Preamble which provides, in pertinent part:

[1] An independent, fair and impartial judiciary is indispensable to

¹ “The purpose of the prohibition in the solicitation of funds is to avoid misuse of judicial office. The rule addresses several concerns: one is that judges may intimidate potential donors into making contributions; a second, related to the first, is that judges may trade on the prestige of their office to raise funds on behalf of an organization, even if it does not rise to the level of intimidation; and third, that donors may expect future favors in return for their largesse.” Judicial Conduct and Ethics, 4th Edition, Alfani, Lubet, Shaman and Geyh, Section 9.04(A), page 9-15, Matthew-Bender (2010).

our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Washington State Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide. **The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct,** and to provide a basis for regulating their conduct through the Commission on Judicial Conduct. (Emphasis added.)

Public confidence in judges' independence, impartiality, integrity, and competence must be scrupulously guarded. Most judges are quite conscious that they may not solicit funds for themselves or others in face-to-face encounters, and there is not a meaningful or workable distinction between in-person and written or electronic solicitations (although solicitations could be more or less egregious, depending on the context).²

Taking into account the factors listed in CJCRP 6(c), Respondent and the Commission agree that an admonishment is the appropriate level of sanction to impose in this matter. An "admonishment" is a written action of the Commission of an advisory nature that cautions a respondent not to engage in certain proscribed behavior, and is the least severe disciplinary action available to the Commission. As set forth in the Preamble, paragraph 3 above, the Code is intended to provide guidance to judges. The area of social media is a relatively new form of communication,

² See *Williams-Yulee v. Florida Bar*. The U.S. Supreme Court rejected as "unworkable" the distinction that a solicitation in a letter posted on social media was not a personal solicitation, noting "...of course,...some personal solicitations raise greater concerns than others. A judge who passes the hat in the courthouse creates a more serious appearance of impropriety than does a judicial candidate who makes a tasteful plea for support on the radio." 135 S. Ct. 1656, 1671, (2015).

and the law tends to lag behind technology. There has not yet been a Commission opinion addressing social media, so need for guidance is greater than in other areas. The Commission's failure to act on a case involving a Code violation on social media, even one with strong mitigators, could wrongly signal to judges and the public that online Code violations are somehow exempt from enforcement.

Factoring of the aggravating and mitigating factors in CJCRP 6(C) almost entirely favor the Respondent. This was an isolated incident, which occurred outside the courtroom, though on a social media site that identified Respondent as a judge. There is no indication the conduct was injurious to others; in fact, the goal was to support a philanthropic cause: crime victims' families in a small community who had just suffered grievous losses. Respondent has a long history of productive service as a judicial officer and has had no prior discipline. He was entirely cooperative with the commission's proceeding. There is one Ethics Advisory Opinion, EAO 16-05, that warns against the use of judicial office to promote a charitable fundraiser through social media. This potential aggravator is balanced by the fact that Respondent recognized the problematic nature of the conduct, and removed the post even prior to contact from the Commission.

2. Respondent agrees he will promptly read and familiarize himself with the Code of Judicial Conduct in its entirety, and will submit a sworn statement or declaration to the Commission attesting he has done so within 30 days of entry of this agreement.

C. Standard Additional Terms and Conditions

1. By entering into this stipulation and agreement. Respondent 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.

2. Respondent has represented himself in these proceedings. He affirms that he has had an opportunity to consult with an attorney and voluntarily chooses to represent himself in this matter and enter into this agreement. Respondent agrees that he will not retaliate against any

person known or suspected to have cooperated with the Commission, or otherwise associated with this matter. Respondent further affirms that he will not repeat such conduct in the future.



Honorable David A. Svarén
Respondent

11/20/18
Date



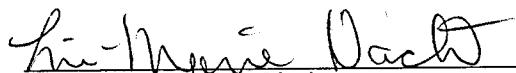
J. Reiko Callner
Executive Director
Commission on Judicial Conduct

11/26/18
Date

ORDER OF ADMONISHMENT

Based upon the above stipulation and agreement, the Commission on Judicial Conduct hereby orders Judge David A. Svaren ADMONISHED for violating Canon 1 (Rules 1.1 and 1.3) and Canon 3 (Rule 3.7(B)) 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 7th day of December, 2018.



Lin-Marie Nacht, Chair
Commission on Judicial Conduct