

JUL 20 2018

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

OF THE STATE OF WASHINGTON

COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of)
)
 The Honorable Leonid Ponomarchuk)
 Commissioner of the King County)
 Superior Court)
 _____)

CJC No. 8838-F-179

STIPULATION, AGREEMENT AND ORDER OF ADMONISHMENT

The Commission on Judicial Conduct ("Commission") and King County Superior Court Commissioner Leonid Ponomarchuk ("Respondent") 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.

The Commission has been represented in these proceedings by its Executive Director, J. Reiko Callner, and Respondent has represented himself.

I. STIPULATED FACTS

A. Respondent is now, and was at all times referred to in this document, a commissioner of the King County Superior Court. He has served in that capacity since 1998.

B. On October 19, 2017, Respondent presided over a hearing to address release conditions for an individual who had been apprehended on a civil warrant for failing to appear at a child support enforcement hearing. (Cause Number 08-5-02302-9 SEA.) During the proceeding, the defendant explained he missed his previous court hearing because he had been dealing with medical issues and appointments, and lost track of the court date. Respondent, noting the defendant had missed other court dates, allowed for his release but on the condition that he "tattoo right now the next court date." Respondent directed the defendant to approach the bench and handed him an ink pen. Although defendant's counsel objected to the court requiring "someone to tattoo themselves,"

the defendant complied with Respondent's directive and wrote his next court date across his forearm with the ink pen.

C. Respondent's actions were, predictably, the subject of comment at the courthouse, and were brought to the attention of the King County Superior Court in November 2017. The court's Personnel and Executive Committees (composed of elected superior court judges) reviewed the matter and ultimately suspended Respondent for 15 work days without pay, finding his conduct failed to comport with the court's expectations regarding appropriate judicial demeanor. The Executive Committee informed Respondent that requiring the defendant to write on his body, and the reference to "tattooing" is both inherently demeaning and carried connotations for some of tattooing of victims of the Holocaust. This was not the first occasion Respondent has been sanctioned for demeanor issues by the court's Executive Committee.

D. The Commission received a complaint regarding this matter in January 2018. Following a confidential preliminary investigation, the Commission initiated disciplinary proceedings by serving Respondent with a Statement of Allegations on April 16, 2018. The Statement of Allegations alleged his actions during the October 19, 2017 hearing at issue violated Canon 1 (Rules 1.1 and 1.2) and Canon 2 (Rule 2.8(A) and (B)) of the Code of Judicial Conduct.

E. Respondent timely answered the Statement of Allegations on April 25, 2018. In his answer, Respondent wrote that he did not intend to be discourteous toward the defendant, instead he meant to "impress upon him the seriousness of the proceedings while allowing his release." Respondent added that he was "mortified" to learn that his use of the term "tattoo" could be interpreted as analogous "to the historical horror of the Holocaust and the tattooing of prisoners for identification." Respondent concluded his answer by expressing remorse and recognizing that, regardless of his intent, his actions caused discredit to him and the court.

II. AGREEMENT

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

1. Respondent agrees his conduct described above violates Canon 1 (Rules 1.1 and 1.2) and Canon 2 (Rule 2.8) of the Code of Judicial Conduct. Rules 1.1 and 1.2 require judges to uphold the integrity of the judiciary by avoiding impropriety and the appearance of impropriety and by acting at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary.¹ Rule 2.8 requires judges to maintain appropriate courtroom decorum and be patient, dignified and courteous to all persons with whom they deal in their official capacity.²

2. Requiring a defendant to write or "tattoo" his next court date on his arm in black ink was demeaning and humiliating. Judicial officers often encounter frustrating individuals who lead chaotic lives. Accordingly, judges and commissioners are entrusted with great power to enforce their orders. Respondent's actions here, however, were contrary to a judicial officer's ethical obligation to treat people before the court with dignity, courtesy and patience.

B. Imposition of Sanction

1. The sanction imposed by the Commission must be commensurate to the level of Respondent's culpability and must be sufficient to restore and maintain the dignity and honor of the judicial position. The sanction should also seek to protect the public by assuring that Respondent and other judges will refrain from similar acts of misconduct in the future.

2. In determining the appropriate level of discipline to impose, the Commission considers the factors set out in CJCRP 6(c).

a. Characteristics of Respondent's Misconduct. The misconduct

¹ Canon 1 of the Code of Judicial Conduct states that a judge shall uphold and promote the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. Rule 1.1 specifies, "A judge shall comply with the law, including the Code of Judicial Conduct." Rule 1.2 provides, "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."

² Canon 2 expresses that "a judge should perform the duties of judicial office impartially, competently, and diligently." Rule 2.8 (A) provides, "A judge shall require order and decorum in proceedings before the court." Rule 2.8(B) states, "A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials and others subject to the judge's direction and control."

occurred in the courtroom, during court proceedings, and while Respondent was acting in his official capacity. Injudicious demeanor is considered serious misconduct. As the Commission has noted in prior cases, appropriate judicial demeanor plays an important role in the public's perception of justice. The public is more likely to respect and have confidence in the integrity and fairness of a judge's decision if the judge is outwardly respectful, patient and dignified. Because of the power disparity between a judge and others in the courtroom, berating or demeaning a litigant or an attorney is an abuse of judicial power. Here, persons in the courtroom were personally impacted by Respondent's actions, and the litigant in this case was initially accused of an infraction because King County Jail inmates are prohibited from voluntarily writing on their bodies. In addition, during its investigation, the Commission learned that the King County Superior Court has, on several prior occasions, addressed concerns with Respondent regarding his demeanor. On at least three occasions since 2013, the court has disciplined Respondent and imposed remedial measures in response to demeanor issues. Thus, while the conduct resulting in this disciplinary action concerns a single incident, Respondent's misconduct is not considered isolated, but rather represents a pattern of similar behavior.

b. Service and Demeanor of Respondent. Respondent has been a judicial officer for over 19 years. He has had no prior public disciplinary history with this body. The job of a family court commissioner is important, difficult, and stressful. The people they interact with are often unrepresented and cannot or will not comply with basic family and other responsibilities. Respondent appears to have responded to the repetitive and contentious nature of the work by expressing cynicism or a lack of compassion for some members of the public who appear before him. Court commissioners answer directly to the elected judges of the superior court who, in King County, conduct regular biannual reviews of their performance. Since 2013, Respondent's problematic demeanor issues garnered progressive sanctions, including suspension without pay, from the reviewing judges. He was abundantly put on notice that his demeanor as a judicial officer must be appropriate in his work for the court, and that his demeanor is reviewed regularly. The

misconduct addressed by the Commission in this case has been addressed by the King County Superior Court's Executive Committee with a stringent sanction - fifteen days' suspension without pay.

Had the Commission's action been the only response to this and prior incidents, the sanction imposed by the Commission would likely be greater. The prior discipline by the court was significant, however, and included a period of suspension without pay. Intervention by the Commission on Judicial Conduct, in contrast to the internal measures undertaken by the court, must be public, under the Commission's rules and constitutional mandate. The intervention by the Commission has had a substantial additional impact on Respondent, who has credibly stated that he has truly internalized the importance of maintaining appropriate judicial demeanor and assures the Commission that he will conduct himself with appropriate judicial temperament going forward, even if he experiences impatience or frustration on the bench.

Finally, Respondent has a reputation for being a competent, conscientious and knowledgeable judicial officer. With the exceptions at issue here, he has served the court and the public ably. He has fully cooperated with the Commission's investigation and proceedings and, as evidenced by this agreement, has accepted that his conduct was inappropriate.

C. Based upon the stipulated facts, upon consideration and balancing of the factors set out in CJCRP 6(c), Respondent and the Commission agree that Respondent's stipulated misconduct shall be sanctioned by the imposition of an admonishment. An "admonishment" is a written action of the Commission that cautions a respondent not to engage in certain proscribed behavior. An admonishment may include a requirement that the respondent follow a specified corrective course of action. Admonishment is the least severe disciplinary action the commission can issue.

D. Respondent agrees that he will participate in ethics training focusing on appropriate courtroom demeanor, approved in advance by the Commission Chair or Chair designate. Respondent agrees he will complete one hour of such training (not at Commission expense) and will certify successful completion of such training in writing within one year from the date this stipulation

is accepted by the Commission. This requirement takes into account the prior training and counseling required by the court's Executive Committee and sanctions, and it is the Commission's hope and expectation that Respondent will fully absorb the gravity of the situation and put to use the skills he acquired during previous remedial training.

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

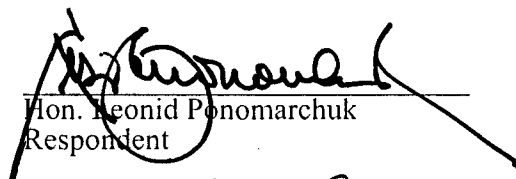
F. Respondent agrees that he will promptly read and familiarize himself with the Code of Judicial Conduct in its entirety and provide written confirmation of that fact within one month of the date this stipulation is accepted.

G. Respondent has represented himself in these proceedings. He affirms he has had an opportunity to consult with an attorney and voluntarily chooses to represent himself in this matter and enter into this agreement.

H. Standard Additional Terms and Conditions

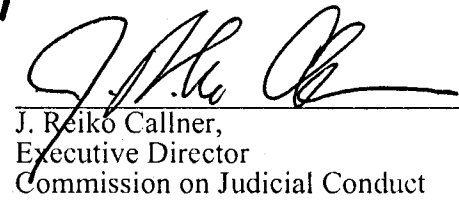
1. By entering into this stipulation and agreement, Respondent waives his procedural rights and appeal rights in this proceeding pursuant to the Commission on Judicial Conduct Rules of Procedure and Article IV, Section 31 of the Washington State Constitution.

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



Hon. Leonid Ponomarchuk
Respondent

July 12, 2018
Date



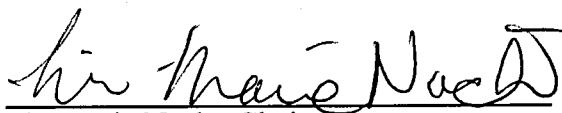
J. Reiko Callner,
Executive Director
Commission on Judicial Conduct

July 16, 2018
Date

ORDER OF ADMONISHMENT

Based upon the above stipulation and agreement, the Commission on Judicial Conduct hereby orders Respondent Leonid Ponomarchuk Admonished for violating Canon 1 (Rules 1.1 and 1.2) and Canon 2 (Rule 2.8) of the Code of Judicial Conduct. Respondent shall not engage in such conduct in the future and shall fulfill the terms of the agreement as set forth above.

DATED this 20th day of June, 2018.



Lin-Marie Nacht, Chair
Commission on Judicial Conduct