

FILED
DEC -7 2018
COMMISSION ON JUDICIAL CONDUCT

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

In Re the Matter of

The Hon. Mary Yu
Justice of the Supreme Court

CJC No. 8960-F-183

**STIPULATION, AGREEMENT
AND ORDER OF
ADMONISHMENT**

The Commission on Judicial Conduct (“Commission”) and Washington Supreme Court Justice Mary Yu stipulate and agree as provided below. This stipulation is entered pursuant to Rule 23 of the Commission on Judicial Conduct Rules of Procedure and shall not become effective until approved by the Washington State Commission on Judicial Conduct. The Commission has been represented in these proceedings by its Executive Director, Reiko Callner, and Justice Yu has been represented by attorney Paul R. Taylor.

I. STIPULATED FACTS

A. Justice Mary Yu was appointed to the Washington Supreme Court in 2014 and subsequently elected to the Court in 2014 and 2016. Prior to that, Justice Yu served as a King County Superior Court judge for more than 14 years.

B. Justice Yu has maintained a Facebook page since 2013 which identified her as a member of the judiciary. In Facebook parlance, it is a “government official” page, which means that it is an open page that anyone can access. Justice Yu does not, however, solicit “followers” nor can people “friend” her page. Justice Yu uses the page to help educate viewers about various subject matters related to the judicial branch. Justice Yu is actively engaged in the community and

her posts are intended to make the court and judicial officers more accessible and transparent to the public.

C. On April 22, 2018, Justice Yu shared the following post from Lifelong's website¹ on her Facebook page:

Join Lifelong for Dining Out For Life on April 26!

On Thursday, April 26, raise your fork for Dining Out For Life! Join Lifeline at one of 90 restaurants in the Greater Seattle Area who are set to donate 30-50% of their proceeds to vital programs that support people facing serious illness and poverty in our community.

<https://www.diningoutforlife.com/seattle>

Join Lifelong for Dining Out for Life on April 26! Dining Out for Life, Seattle, Lifelong AIDS Alliance, Restaurants, HIV/AIDS, fundraiser, Lifelong, DOFL,...²

D. On April 28, 2018, Justice Yu wrote the following posting on her Facebook page about *Real Change*:³

I know many of you wonder what you might do about homelessness. There are a myriad of policy issues that deserve your attention. I can't advise you on any of them. But, here is one concrete thing you can do each week: buy the "Real Change" newspaper from a vendor that you see on the street corners in Seattle. They buy the paper for .60 and sell it for \$2.00. It is a business for each vendor. The paper has interesting articles on housing, poverty, and other social issues. If you don't have cash, most will take payment with Venmo. But how hard can it be to withdraw some cash each

¹ Lifelong is a non-profit organization that, among other things, provides recovery assistance for persons suffering from drug abuse and addiction.

² See attachment.

³ Real Change is a weekly newspaper that employs homeless and previously homeless people as vendors. According to their mission Statement: "Real Change exists to provide opportunity and a voice for low-income and homeless people while taking action for economic, social and racial justice."

month, stuff it in your pocket, and just commit to buying the paper each week?

Support these folks who are just trying hard to earn some money in an honest way.⁴

E. In creating both posts, Justice Yu was acting on her own, and not in her official capacity. She is not a member, and was not acting on behalf, of either organization, nor did she believe at the time that the postings violated the Code. Rather, she explained to the Commission that her intent was simply to pass along information about the activities of the two organizations that serve disadvantaged populations. Justice Yu further explained that in creating the posts, she neither intended to violate nor believed she was violating the Code. Given the elements of what constitutes a “solicitation” and the nature of her Facebook communication, Justice Yu did not believe the posts rise to the level of being a solicitation. Nevertheless, she acknowledges that the Commission is the body charged with interpreting facts and enforcing the Code, and she defers to the Commission and accepts its determination that the posts violated the Code.

Justice Yu recognizes there is a need for greater guidance on the increasingly prevalent use of social media and that absent such guidance, there are risks and responsibilities unique to judicial officers who communicate through social media. Justice Yu believes this Stipulation will advance the Commission’s provision of such guidance and raise awareness on the risks of sharing information on social media that could be construed as solicitations or endorsements.

⁴ See attachment.

II. AGREEMENT

A. Based upon the above stipulated facts, Justice Yu defers to the Commission and accepts that the Commission finds the posts violated Canon 1, Rules 1.1 and 1.3, and Canon 3, Rule 3.7(B), of the Code of Judicial Conduct.

B. Rule 1.1 of the 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 supervisor or appellate authority. . .” “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.”⁵

C. The prohibition against judicial solicitation of money does not reflect on the worthiness or virtue of the charity or cause in question.⁶ 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. While these Facebook posts present no

⁵ Judicial Conduct and Ethics, 5th Edition, Alfani, Lubet, Shaman and Geyh, Section 9.04(2), Lexis-Nexis (2018).

⁶ 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.

articulable element of coercion, the Commission finds that it is still an abuse of the prestige of judicial office. That prestige 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. Justice Yu defers to the Commission's judgment on this issue.

D. The sanction imposed by the Commission must be commensurate to the level of Justice Yu'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 the 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 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, including Justice Yu, are quite conscious that they may not solicit funds for themselves or others in face-to-face encounters. Furthermore, there is not a meaningful or workable distinction between in-person and written or electronic direct solicitations (although solicitations could be more or less egregious, depending on the context). However, social media presents unique nuances between the communicator and the recipient of the communication.

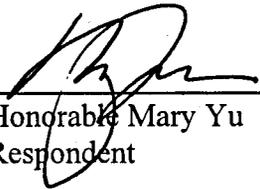
Taking into account the factors listed in CJCRP 6(c), Justice Yu and the Commission agree that an admonishment is the appropriate action in this matter. An "admonishment" is a written action of the Commission of an advisory nature that cautions a respondent not to engage in certain proscribed behavior, and is the least severe disciplinary action available to the Commission. As set forth in the Preamble, paragraph 4 above, the Code is intended to provide guidance to judges. The area of social media is a relatively new form of communication, and in this area, as in so many others, the law tends to lag behind technology. There has not yet been a Commission opinion addressing social media, so the need for guidance here is even greater than in other areas.

Factoring the aggravating and mitigating factors in CJCRP 6(c) favors Justice Yu. These two postings, close in time, were not part of a pattern, and occurred outside the courtroom, though on a social media site that identified Justice Yu as a judge. There is no indication the conduct was injurious to others; in fact, the goal was to help the community by supporting philanthropic causes. Justice Yu has a long and exemplary history of productive service as a judicial officer and has had

no prior discipline. She 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 there have been no previous public cases in Washington State involving social media, and that Justice Yu had operated with the most positive intentions.

E. Justice Yu affirms that she is familiar with the Code of Judicial Conduct in its entirety and the various published opinions interpreting the Code.

F. By entering into this stipulation and agreement, Justice Yu waives her 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.



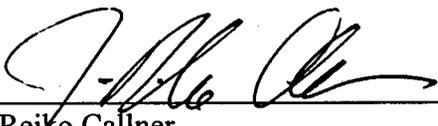
Honorable Mary Yu
Respondent

12/3/18

Date

Paul R. Taylor, WSBA #14851
Attorney for Respondent

Date



J. Reiko Callner
Executive Director
Commission on Judicial Conduct

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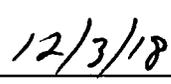
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Respondent

Date



Paul R. Taylor, WSBA #14851
Attorney for Respondent



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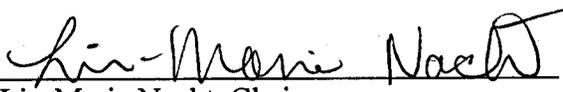
J. Reiko Callner
Executive Director
Commission on Judicial Conduct

Date

ORDER OF ADMONISHMENT

Based upon the above stipulation and agreement, the Commission on Judicial Conduct hereby orders Justice Mary Yu ADMONISHED for violating Canon 1, Rules 1.1 and 1.3 and Canon 3, Rule 3.7(B) of the Code of Judicial Conduct.

DATED this 7th day of December, 2018.


Lin-Marie Nacht, Chair
Commission on Judicial Conduct



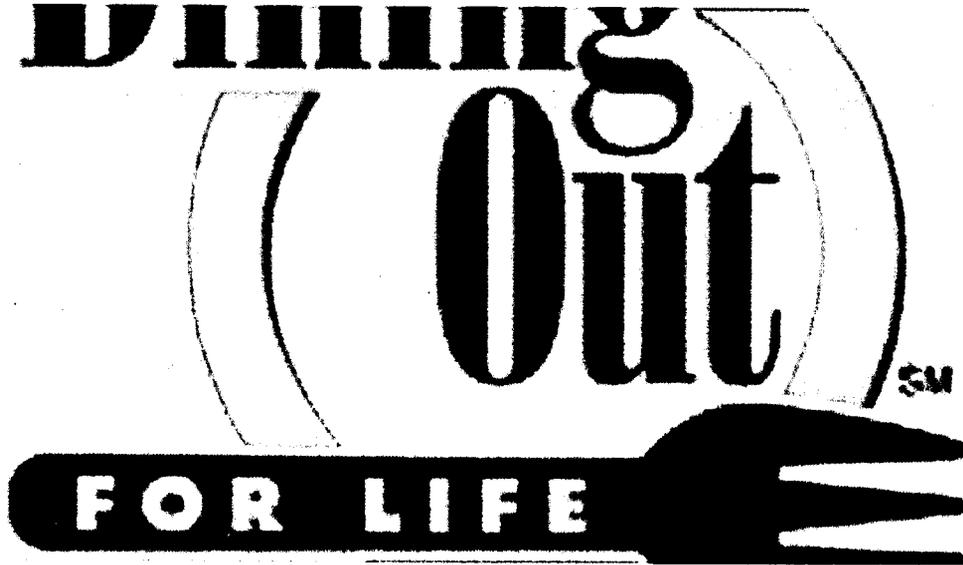
Justice Mary Yu

April 22 ·

Join Lifelong for Dining Out For Life on April 26!

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<https://www.diningoutforlife.com/seattle>



DININGOUTFORLIFE.COM

Join Lifelong for Dining Out For Life on April 26! | Dining Out for Life...

Save

764

People Reached

15

Engagements

14

Clicks

Boost Unavailable

Lifelong, [redacted] and 12 others

1 Comment

Like

Comment

Share



Most Relevant



Write a comment...

Lifelong

Thanks for sharing the event Justice Mary Yu! Hope to see you at your favorite participating restaurant, can't wait to have you for the next Gay Bingo!

Like · Reply · Message · 24w



Justice Mary Yu

April 28 ·

I know many of you wonder what you might do about homelessness. There are a myriad of policy issues that deserve your attention. I can't advise you on any of them. But, here is one concrete thing you can do each week: buy the "Real Change" newspaper from a vendor that you see on the street corners in Seattle. They buy the paper for .60 and sell it for \$2.00. It is a business for each vendor. The paper has interesting articles on housing, poverty, and other social issues. If you don't have cash, most will take payment with Venmo. But how hard can it be to withdraw some cash each month, stuff it in your pocket, and just commit to buying the paper each week?

Support these folks who are just trying hard to earn some money in an honest way.

give BIG GiveBIG's pre-giving begins April 26
 Your gift of any size will be matched by the Wyncote Foundation NW
See page 2

\$2 REAL CHANGE
Cash or Venmo
 VOL. 23, NO. 17
 APRIL 25 - MAY 1, 2018

YOUR VENDOR BUYS THIS PAPER FOR 60¢ AND KEEPS ALL THE PROCEEDS. PLEASE PURCHASE FROM VENDORS WITH BLUET 2018 BADGES

GETTING THE BOOT

This is no fairy tale. People are getting evicted at an ever-increasing rate in the US.

2,001

People Reached

146

Engagements

249

Clicks

Boost Unavailable

██████████ and 115 others

6 Comments 8 Shares

Like

Comment

Share



Most Relevant



Write a comment...