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COMMISSION ON JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In Re the Matter of

The Honorable Bruce A. Spanner,
Benton and Franklin Counties
Superior Court Judge

NO. 8899-F-186

STIPULATION, AGREEMENT
AND ORDER OF REPRIMAND

The Commission on Judicial Conduct ("Commission") and Benton and Franklin Counties Superior Court Judge Bruce Spanner ("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 is represented in these proceedings by attorneys Rita L. Bender and William J. Bender, and Respondent is represented by attorney David Allen.

I. STIPULATED FACTS

A. Respondent is now, and was at all times referred to in this document, a superior court judge of Benton and Franklin Counties. He has served in that capacity since 2008.

B. On March 14, 2018, Respondent was assigned to hear the Benton County Superior Court guardianship/probate docket. One of the four cases on that afternoon docket, Cause No. 17-4-00423-0, was a guardianship of a young woman who had suffered a significant injury arising from medical malpractice. The matters to be addressed that day in the guardianship case were routine. Prior to the hearing, however, the young woman's attorneys filed a motion disqualifying Respondent from hearing her case, resulting in the hearing being stricken from the calendar and

rescheduled to be heard by a different judicial officer.¹ Before Respondent was informed of his disqualification, he had reviewed the guardianship case file in the ordinary course of preparing for the afternoon docket. He also reviewed a separate case file involving the young woman that accompanied the guardianship case file. (It is the practice for court staff to supply judges with case files that are related to currently docketed cases, for the judges' preparation.) That case, Cause No. 17-4-00511-2, was a minor settlement action to approve the young woman's medical malpractice settlement.² In that case, the settlement had been approved by one of Respondent's bench mates on March 2, 2018, so there was no further activity scheduled or anticipated in the case.

In reviewing the minor settlement file, Respondent observed that certain parts of the settlement and supporting documentation were filed under seal and kept confidential through a procedure that did not appear to apply to minor settlement actions. Respondent surmised, based in part on "back hall" talk he had heard at the courthouse among court personnel, and in the community, that the attorneys representing the young woman in the minor settlement case improperly sought to keep the settlement confidential in order to avoid disclosing the settlement amount in a pending dissolution case involving one of the attorneys. Respondent suspected the attorneys were motivated by a desire to keep earnings from the settlement secret from one of the attorney's estranged husband. Based on his suspicions, Respondent concluded the attorneys intentionally sought to commit a fraud on the court by improperly sealing the documents. There was no competent evidence at all before the Judge to support his conclusion.

¹ An affidavit of prejudice, now referred to as a notice of disqualification, permits a party to remove one judge per case without stating a reason, provided the judge has not yet made discretionary decisions in the case. RCW 4.12.040.

² The young woman was a plaintiff in a medical malpractice case filed in Spokane Superior Court in 2016. After nearly two years of extensive discovery and pretrial litigation that matter was resolved by agreement of the parties. The settlement agreement was conditioned, in part, on it remaining confidential. Because the young woman was disabled or incapacitated due to her injuries, by law her settlement had to be approved by a judge in a separate action. (See Special Proceedings Rule 98.16W.)

Although the minor settlement case was not before Respondent, on his own initiative and without notice to any party, he issued an Order Unsealing Documents in that case, wherein he made a “finding of fact” that the documents were filed under seal by the attorneys in order to prevent the estranged spouse of one of the attorneys “from learning the details of the settlement in this matter, and the extremely large fee granted to plaintiff’s attorneys.” Respondent further made a “legal conclusion” that sealing the documents “was done without lawful authority, done with perhaps nefarious motivations, and therefore, improper.” Respondent stayed the order for 14 days to allow the parties an opportunity to address his decision to unseal. (The Order, dated and filed March 14, 2018, is attached hereto as Exhibit 1.)

C. The Commission received a complaint regarding this matter in March 2018. Following a confidential preliminary investigation, the Commission initiated disciplinary proceedings by serving Respondent with a Statement of Allegations on August 8, 2018. The Statement of Allegations alleged that Respondent may have violated the Code of Judicial Conduct by issuing the Order Unsealing Documents ex-parte, without giving the parties notice or an opportunity to be heard prior to its issuance. The Statement of Allegations further alleged that his actions could reasonably be perceived to indicate bias, prejudice or retaliation against the attorneys referenced in the Order. Respondent answered the Statement of Allegations by denying any wrongdoing and asserted that his actions were motivated by his desire to prevent fraud and protect the integrity of the court. He also wrote that by staying his order for 14 days, he gave the parties an opportunity to be heard on the issue of unsealing the documents.

D. On May 2, 2019, the Commission filed its Statement of Charges. Respondent Answered the Statement of Charges on May 22, 2019, again denying wrongdoing. (These two documents are public and can be viewed on the Commission’s website.) A hearing date was set for October 14, 2019.

II. AGREEMENT

A. Respondent agrees he violated Canon 1 (Rules 1.1 and 1.2) and Canon 2 (Rules 2.2, 2.3(A), 2.6(A) and 2.9) of the Code of Judicial Conduct.

1. Rules 1.1 and 1.2 state that the overarching principles of the Code and 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.

2. Respondent's conduct violated Rules 2.2 and 2.3(A) which require judges to perform all duties of office fairly, impartially and without bias or prejudice. Judge Spanner's finding and conclusion of a suspected nefarious motive was not only unsupported by competent evidence but was unnecessary to the substantive question of whether the documents were properly sealed. His actions thus gratuitously impugned the attorneys' integrity, which created a perception of partiality and unfairness, in contravention of Rules 2.2 and 2.3. The terms of Respondent's March 14 Order compounded the denial of fundamental fairness. Given Respondent's earlier decision in August 2016 to recuse himself from the attorney's divorce case, his March 14, 2018, Order, directed as it was to litigation issues arising in that divorce case, constituted improper involvement in a matter where he himself had previously determined that even the appearance of fairness required his recusal.

3. Respondent violated Rule 2.6(A) which requires a judge to "accord to every person who has a legal interest in a proceeding or the person's lawyer, the right to be heard according to law." Respondent entered an order and made findings of fact and conclusions of law in a case that was not before him for a decision and did so on his own initiative, without giving notice or the opportunity to be heard prior to entering that order, in violation of Rule 2.6.

4. Respondent violated Rule 2.9(A) which provides that judges shall not "initiate, permit or consider ex-parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending

matter, before that judge's court. . . ." Rule 2.9(C) provides that "[a] judge shall not investigate facts in a matter pending or impending before that judge and shall consider only the evidence presented and any facts that may properly be judicially noticed, unless expressly authorized by law." His conclusion that the attorneys acted "with perhaps nefarious motivations" and his finding that the documents were sealed to prevent the attorney's husband from learning the details of the settlement were not based on a motion, evidence or argument presented to him, but on mere speculation and conjecture he gathered from extrajudicial sources including, as he has acknowledged, from "back hall" courthouse chatter, in violation of Rule 2.9.

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 Misconduct

(1) Whether the conduct was an isolated instance or a part of a pattern of conduct.

This appears to have been an isolated instance of misconduct. Blunting the weight of this mitigating factor is that Respondent's misconduct was not spontaneous, but rather his actions were deliberate and taken after reflection.

(2) The nature, extent, and frequency of occurrence of the acts of misconduct.

The nature of this misconduct is serious in that the primary duty of a judge is to hear and decide all proceedings fairly and to allow every person who is legally interested in a proceeding

the right to be heard in accordance with the law. Respondent's actions betrayed that basic judicial obligation to act as a neutral arbiter.

(3) Whether the misconduct occurred in or out of the courtroom.

The misconduct took place in Respondent's chambers, not in a courtroom. The conduct, however, involved official judicial adjudicative behavior. The fact that the misconduct occurred in chambers only underscores the nature of the ex parte violation and should be considered an aggravating factor. The Order is a public document in a public file, and was served on several parties in the underlying litigation.

(4) Whether the misconduct occurred in the judge's official capacity or in the judge's private life.

The misconduct took place in the judge's official capacity and in his adjudicative role.

(5) Whether the judge flagrantly and intentionally violated the oath of office.

Although Respondent maintains his motivations were proper, the gratuitous findings in paragraph 8 of the Order's "Findings of Fact" and the malicious conclusion in paragraph 3 of the Order's "Conclusions of Law" suggest a flagrant disregard of his duty to faithfully and impartially uphold the Constitution in performing his duties as a judge.

(6) The nature and extent to which the acts of misconduct have been injurious to other persons.

Judge Spanner's Order attacks the integrity of the attorneys without a proper basis, and does so by employing the weight of officially adjudicated findings and conclusions. This Order has been injurious to the professional reputations of the attorneys and interfered with the orderly resolution of the divorce case.

Judge Spanner's public Answer to the Commission's Statement of Charges made yet more improper allegations than did his original Order. The unfounded allegations against these attorneys were carried in the local press and have been used in post-dissolution proceedings to impugn the integrity of the attorneys.

- (7) The extent to which the judge exploited his position to satisfy personal desires.

Respondent maintains that he did not act out of animosity, but was motivated solely to protect the integrity of the court and the justice system. His actions, however, did not simply correct a procedural error he had noted, (the sealing of some of the documents without a prior court order), but had the result of punishing the attorneys for what he perceived to be their wrongful conduct.

- (8) The effect the misconduct has upon the integrity of and respect for the judiciary.

The Order has diminished public respect for the integrity of the Court. The Order and the Judge's responses in these proceedings have received wide attention in Benton and Franklin counties. Publicly and gratuitously attacking the character of two local attorneys in a court order without notice and without a reasonable evidentiary basis, coupled with Respondent's initial refusal to acknowledge the obvious inappropriateness of his actions, reflects poorly on him and, by extension, his bench and the judiciary in general.

b. Service and Demeanor of the Judge

- (1). Whether the judge has acknowledged or recognized that the acts occurred and has evidenced an effort to change or modify the conduct.

Respondent states he takes responsibility for his conduct. However, from the time he entered his Order on March 14, 2018, and throughout these Commission proceedings, Respondent refused to acknowledge his actions were in anyway inappropriate and instead repeatedly sought to

justify them. His Answer to the Statement of Charges contains even more explicit accusations against the attorneys than did his original Order and further reinforced his lack of appreciation for his ethical obligations as a judge. It was not until a week before the contested hearing in this matter that Respondent advised he had reconsidered his prior position and conceded that he was wrong to rely upon ex parte communications and to opine as to the motivations of the attorneys who sealed the documents and regrets doing so. Respondent now assures the Commission that he will not repeat this conduct in the future. While the sincerity of this late change in position might be viewed with suspicion, by entering into this stipulation, Respondent has acknowledged the ethical violations raised by his conduct which gives the Commission a basis to accept his stated commitment to refrain from similar acts in the future.

(2). The judge's length of service in a judicial capacity

Respondent has been a judicial officer for eleven years. He is considered by many to be an exceptionally competent and scrupulous judge and has been publically recognized for his service to the bench.

(3). Whether there has been prior disciplinary action concerning the judge.

Respondent has no prior public disciplinary history.

(4) Whether the judge cooperated with the commission investigation and proceeding.

Respondent has cooperated with the investigation and proceeding.

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 reprimand. A "reprimand" is a written action of the Commission that requires a respondent judge to appear personally before the Commission

and that finds that the conduct of the respondent is a violation of the Code of Judicial Conduct, but does not require censure or a recommendation to the supreme court that the respondent be suspended or removed. A reprimand shall include a requirement that the respondent follow a specified corrective course of action. Reprimand is the intermediate level of disciplinary action available to the Commission.

D. Respondent agrees that he will participate in judicial ethics training approved in advance by the Commission Chair or Chair designate. Respondent agrees he will complete four hours 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.

E. Respondent agrees that he will not repeat such conduct in the future, now being 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.

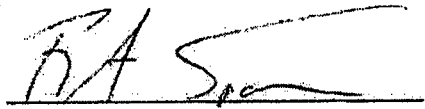
F. Respondent agrees that he will promptly read and familiarize himself with the Code of Judicial Conduct in its entirety and provide written confirmation of that fact within one month of the date this stipulation is accepted.

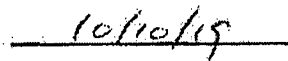
G. Respondent has been represented in these proceedings. He affirms he enters into this agreement after consulting with his attorney.

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.

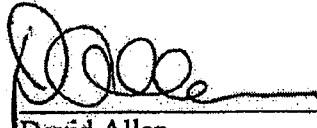
2. Respondent further agrees that he will not retaliate against any person known or suspected to have cooperated with the Commission, or otherwise associated with this matter.





Honorable Bruce A. Spanner
Respondent

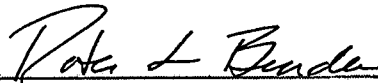
Date Oct. 10, 2019



David Allen
Attorney for Respondent

10/10/2019

Date



Rifa L. Bender

10/10/2019

Date

Disciplinary Counsel



William J. Bender
Disciplinary Counsel

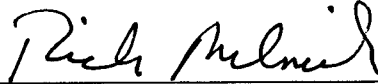
10/10/2019

Date

ORDER OF REPRIMAND

Based upon the above stipulation and agreement, the Commission on Judicial Conduct hereby orders Judge Bruce A. Spanner reprimanded for violating Canon 1 (Rules 1.1 and 1.2) and Canon 2 (Rules 2.2, 2.3, 2.6 and 2.9) 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 22 day of NOVEMBER, 2019.



Hon. Rich Melnick, Presiding Officer
Commission on Judicial Conduct

JOSIE DELVIN
BENTON COUNTY CLERK

MAR 14 2018

FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

In Re Settlement of:)
)
)

ALYSSA ARELLANO-HAWKINS)

Alleged Incapacitated Person.)
_____)

) CAUSE NO: 17-4-00511-2

) ORDER UNSEALING DOCUMENTS
)
)

THE COURT ON ITS OWN MOTION does hereby make the following:

FINDINGS OF FACT

1. On or about the 14th day of December 2017, plaintiff's attorney, Andrea Clare, caused to be filed as a sealed source document the "Declaration of Robert G. McMillen (SPR 98.16W(g)) [sic] in the above captioned matter. As a result, said document was placed by the clerk in a red file folder, thereby making the document inaccessible to the public.
2. On or about the 14th day of December 2017, plaintiff's attorney, Andrea Clare, caused to be filed as a sealed source document the "Affidavit of Andrea J. Clare Per 98.16W(g)" in the above captioned matter. As a result, said document was placed by the clerk in a red file folder, thereby making the document inaccessible to the public.
3. On or about the 14th day of December 2017, plaintiff's attorney, George Telquist, caused to be filed as a sealed source document the "Affidavit of George E. Telquist SPR 98.16W(g)" in the above captioned matter. As a result, said document was placed by the clerk in a red file folder, thereby making the document inaccessible to the public.

4. On or about the 22nd day of February 2018, plaintiff's attorney, George Telquist, caused to be filed as sealed source documents the "Affidavit of George E. Telquist Regarding Compliance with SPR 98.16W(g)", together with the following attachments: (a) Letter to Julia Higuerra, GMP Program Manager, dated February 22, 2018; (b) The Alyssa Arellano-Hawkins Settlement Trust; (c) Notice of Issue dated February 22, 2018; (d) Certificate of Filing and Service dated February 22, 2018; (e) Baker Boyer Fee Schedule; and (f) Unsigned Order Approving Settlement Trust (LSPR 98.18) in the above captioned matter. As a result, said document was placed by the clerk in a red file folder, thereby making the document inaccessible to the public.
5. On or about the 26th day of February, 2018, settlement guardian ad litem, Richard Lewis, caused to be filed as sealed source document the "Report of Richard E. Lewis, Guardian Ad Litem on Proposed Settlement" in the above captioned matter. As a result, said document was placed by the clerk in a red file folder, thereby making the document inaccessible to the public.
6. On or about the 2nd day of March 2018 plaintiff's attorney, George Telquist, caused to be filed as sealed source document the "Order Approving Settlement and for Disbursement of Funds" in the above captioned matter. As a result, said document was placed by the clerk in a red file folder, thereby making the document inaccessible to the public.
7. An order has not been entered in this matter authorizing the filing of any document under seal.
8. Dissolution proceedings are pending in Franklin County between Andrea Clare and her husband. It appears that the documents referred to above were file as "sealed source documents" in order to prevent Ms. Clare's husband from learning the details of the settlement in this matter, and the extremely large fee granted to plaintiff's attorneys.

LEGAL CONCLUSIONS

1. Court Records may be sealed, redacted or destroyed only by court order, where a motion is made and presented in open court, with notice to all parties, pursuant to GR 15, and where the moving party complies with the mandates of *Seattle Times v. Ishikawa*, 97 Wash.2d at 30, 640 P.2d 716 (1982).
2. In family law cases access to certain court records may be restricted by filing them as "sealed financial source documents" under GR 22. The above-captioned matter is not a family law case. The documents identified above

are not the types of documents that may be filed as "scaled financial source documents" under GR 22.

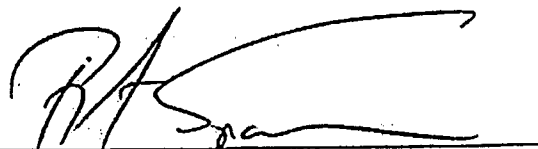
3. The filing of the above-listed documents was done without lawful authority, done with perhaps nefarious motivations, and therefore, improper.

BASED UPON THE FOREGOING,

IT IS HEREBY ORDERED that, consistent with this order, the documents referred to above be removed from the red folder, and placed in the folder that is accessible to the public; and it is further,

ORDERED that this order shall be stayed for a period of 14 calendar days to allow the attorneys named herein, or any interested party, to file and schedule a hearing on a motion to seal under GR 15. If such a motion is not filed or heard within 14 calendars of the date hereon, the stay will be automatically lifted, and the clerk shall then forthwith comply with this order. If the hearing is held within 14 calendar days hereof, the matter will abide the decision of the presiding judicial officer.

DONE this 14th day of March, 2018.

A handwritten signature in black ink, appearing to read "B. A. Spanner", written over a horizontal line.

BRUCE A. SPANNER
SUPERIOR COURT JUDGE