

FILED
APR 26 2019
COMMISSION ON JUDICIAL CONDUCT

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

In Re the Matter of:)
)
The Honorable Timothy B. Fennessy) CJC No. 9014-F-184
Judge of the Spokane County)
Superior Court) **STIPULATION, AGREEMENT**
) **AND ORDER OF ADMONISHMENT**
_____)

The Commission on Judicial Conduct and Timothy B. Fennessy, Spokane County Superior Court Judge, do hereby stipulate and agree as provided herein. This stipulation is entered pursuant to Rule 23 of the Commission on Judicial Conduct Rules of Procedure.

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

I. STIPULATED FACTS

A. Judge Timothy Fennessy (“Respondent”) was at all times discussed herein a judge of the Spokane County Superior Court. Respondent was elected to his position in November of 2016 and took the bench in January of 2017.

B. In Spokane County Superior Court Case No. 13-3-00018-9, Respondent heard a motion for major modification of custody of a minor child in early June, 2017. A supplemental hearing took place on July 21, 2017, at which point the issue was submitted for Respondent’s decision. In January and again in May of 2018, attorneys in the case wrote to the court seeking a decision. Respondent issued a ruling on August 17, 2018, 392 days after the matter was submitted for a decision.

C. In Spokane County Superior Court Case No. 16-7-00340-3, on February 28, 2017, Respondent heard a bench trial to determine whether parental rights should be terminated. Respondent took the matter under advisement and issued a ruling on July 10, 2017, which was 132 days after the matter was submitted for a decision.

D. RCW 2.08.240 and the Washington State Constitution, Article 4, Section 20, require

a decision be issued within ninety days from final submission to the court.¹

E. On June 8, 2018, the Commission received a complaint alleging possible decisional delay by Respondent. Following an independent investigation, the Commission commenced disciplinary proceedings on October 22, 2018, by serving Respondent with a Statement of Allegations. The Statement of Allegations alleged Respondent failed to enter timely decisions in the cases listed above and thereby violated Canon 1 (Rules 1.1 and 1.2) and Canon 2 (Rule 2.5(A)) of the Code of Judicial Conduct.

F. Respondent answered the Statement of Allegations by letter dated November 9, 2018, and admitted that he had failed to timely issue decisions in the matters listed. Respondent candidly acknowledged to Commission staff that during his first year on the bench he failed to timely rule on a handful of other cases. Upon contact from the Commission he promptly reviewed his records to determine which cases might be delayed, completed all outstanding cases, and certifies that he is now current on all decisions.

II. AGREEMENT

A. *Grounds for discipline.*

1. Based upon the above stipulated facts, Respondent agrees that his failure to timely decide the cases listed above violated Canon 1 (Rules 1.1 and 1.2) and Canon 2 (Rule 2.5(A)) of the Code of Judicial Conduct.

2. Rules 1.1 and 1.2 require judges to respect and comply with the law and to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and to avoid impropriety and the appearance of impropriety. Rule 2.5(A) requires that “A judge shall perform judicial and administrative duties competently and diligently.” Comment 3 to Rule 2.5(A) states that: “Prompt disposition of the court’s business

¹ The WA Const., art. IV, § 20 provides, “Every cause submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof; Provided, That if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a hearing.”

RCW 2.08.240 uses nearly identical language and provides, “Every case submitted to a judge of a superior court for his or her decision shall be decided by him or her within ninety days from the submission thereof: PROVIDED, That if within said period of ninety days a rehearing shall have been ordered, then the period within which he or she is to decide shall commence at the time the cause is submitted upon such rehearing, and upon willful failure of any such judge so to do, he or she shall be deemed to have forfeited his or her office.”

requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.” The Commission has referred to the time limits established under the Washington Constitution and RCW 2.08.240 when applying the Code of Judicial Conduct in cases involving decisional delay.

B. Sanction.

1. In accepting this stipulation, the Commission takes into account those factors listed in CJCRP 6(c). The nature of this type of misconduct – decisional delay – is inherently problematic because it deprives litigants of timely justice, which often cannot be remedied through the appellate process. Issuing timely decisions is a core function for any judicial officer. Accordingly, the Commission consistently enforces Canon 2, Rule 2.5(A). In mitigation, Respondent has no history of discipline and was fully cooperative with the Commission investigation and proceeding. Respondent was new to the bench, was presiding over types of cases that he had never dealt with as an attorney, and was faced with a high workload. During the time frame referenced in this stipulation, the Spokane County Superior Court operated with fewer judges than are authorized, in part because one position remains unfunded but also because of retirement, illness and the unfortunate deaths of two judges. Respondent credibly noted to the Commission that his delays were not from a lack of work ethic but rather from a strong desire to come to the right result. Respondent acknowledges, however, that the delays had the potential to create significant negative impact on the litigants and the children involved in these family law cases. Respondent has instituted a process to remind himself of all pending matters in aid of ensuring that this situation does not recur. To his credit, attorneys contacted by the Commission took pains to describe Respondent’s thoughtful and respectful courtroom demeanor and indicated it was clear that he took all matters seriously.

2. Weighing and balancing the above factors, 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. Admonishment is the least severe disciplinary action available to the Commission.

3. Respondent agrees he will re-read the Code of Judicial Conduct in its entirety.

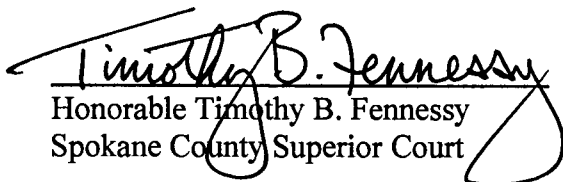
within two weeks of the date this stipulation is entered, and will certify in writing to the Commission that he has done so.

4. Respondent agrees that he will exercise caution to avoid any CJC violations in the future. He will diligently maintain a list of matters pending decision so that those matters will be regularly brought to his attention. For a one year period following entry of this stipulation, Respondent will affirm in writing to the Commission every three months that he has no matters with decisions pending beyond ninety days.

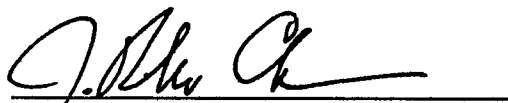
5. Respondent shall not engage in any retaliatory conduct with regard to any person known or suspected to have cooperated with the Commission or who was otherwise associated with this proceeding.

6. Respondent has been unrepresented 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.

7. Respondent agrees that by entering into this Stipulation and Agreement he hereby waives his procedural rights and appeal rights pursuant to the Commission on Judicial Conduct Rules of Procedure and Article IV, Section 31 of the Washington State Constitution in this proceeding.


Honorable Timothy B. Fennessy
Spokane County Superior Court

04/17/19
Date

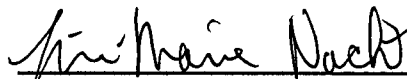

J. Reiko Callner
Executive Director
Commission on Judicial Conduct

04/25/19
Date

ORDER OF ADMONISHMENT

Based upon the above stipulation and agreement, the Commission on Judicial Conduct hereby orders Respondent Timothy B. Fennessy ADMONISHED for violating Canon 1 (Rules 1.1 and 1.2) and Canon 2 (Rule 2.5(A)) of the Code of Judicial Conduct.

DATED this 26th day of April, 2019.



Lin-Marie Nacht, Chair
Commission on Judicial Conduct