

APR 23 2021

**COMMISSION ON JUDICIAL CONDUCT**

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

In Re the Matter of

The Honorable Debra Burchett  
Cowlitz County District Court Judge

CJC No. 9848-F-191

**STIPULATION, AGREEMENT  
AND ORDER OF REPRIMAND**

The Commission on Judicial Conduct and Debra Burchett, Cowlitz County District Court Judge, do hereby stipulate and agree as provided for 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 Burchett has been represented by attorney Kevin Bank.

**I. STIPULATED FACTS**

A. Judge Debra Burchett (“Respondent”) was at all times discussed herein a judge of the Cowlitz County District Court. Respondent was elected to her position in 2018 and took the bench in January 2019.

B. The Commission received multiple, separate complaints in January and February 2020 concerning Respondent’s handling of court proceedings, alleging Respondent failed to conduct hearings in accordance with court rules and established case law which protect criminal defendants’ fundamental due process and constitutional rights. Following a confidential preliminary investigation, the Commission initiated disciplinary proceedings by serving Respondent with a Statement of Allegations on May 4, 2020. The Statement of Allegations alleged Respondent violated the Code of Judicial Conduct in several respects, including:

1. Respondent failed to advise defendants at probation review hearings<sup>1</sup> of their rights, including their right to counsel and the right to a hearing to contest the allegations. For instance, at a probation review hearing on January 27, 2020, in Case No. PC0001383 involving an unrepresented defendant D.W., Respondent imposed a seven-day jail term without advising the defendant of her right to counsel or her right to contest the allegations.

2. At a probation hearing on February 6, 2020, Respondent acknowledged on the record that she had conducted an ex parte investigation into whether the defendant performed community service hours and stated on the record that she intended to recommend significant jail time and further charges, prior to recusing from the matter and reassigning it to another judicial officer.

3. At arraignment hearings in two cases found in the Commission's investigation, Respondent elicited statements from defendants charged with driving offenses against their interest and in violation of their 5<sup>th</sup> Amendment rights to remain silent, by asking whether they had a valid driver's license and how long it had been since they had a valid driver's license, when answering such questions could cause defendants to make self-incriminating statements.

4. On several occasions identified in the Commission's investigation, Respondent, as she sat on cases on the bench, regularly recommended specific businesses to defendants for re-licensing and insurance purposes related to their charges.

5. In open court, Respondent on multiple occasions inquired about defendants' confidential financial information when they were requesting court-appointed lawyers. Respondent engaged in such questioning on the record in the presence of the prosecution.

6. Respondent regularly presided over cases in which a notice of disqualification had previously been filed against her.

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<sup>1</sup> At this point in the proceedings, defendants were typically no longer represented by their lawyers.

C. Respondent answered the Statement of Allegations on June 12, 2020. In her answer Respondent acknowledged that as a new judge, she had made mistakes, but was open to learning and improving her performance. Respondent acknowledged that she had failed to ensure whether defendants in probation hearings were aware of their constitutional and statutory rights, including their right to be represented by counsel and their right to have a hearing on the alleged violation. Respondent admitted that her ex parte investigation in the probation matter was inappropriate and violated the Code. Respondent indicated she would refrain from inquiring into license or financial status in open court, and that she will no longer suggest defendants patronize specific businesses, as doing so gives at least the appearance of abusing the prestige of judicial office to advance the economic interests of another. She states that she was trying to be helpful by recommending the businesses and did not do so for personal gain. She also advised that she had amended her practice to prevent her from presiding over cases in which she had previously been disqualified. She explained that she had not intentionally continued to preside over such cases but acknowledged that it is her responsibility to assure that she does not. In a supplemental answer, received August 12, 2020, Respondent also admitted to revoking probation of D.W. on January 27th without a hearing and without advising D.W. of her rights, including her right to an attorney.

D. During negotiations, Commission staff learned of an incident in which Respondent declined to ascertain who was attempting to appear in court via Zoom. Just after 3:15pm, at the conclusion of the afternoon calendars on February 26, 2021, the court clerk alerted Respondent that there was one more person in the Zoom “waiting room” and asked if they should be “let in” so that Respondent could speak with them. Respondent was apparently tired and said that she “just can’t.” The clerk indicated that they would just need to see who it was and set it over. The person in the Zoom waiting room had renamed themselves “Help I couldn’t log in at 2pm,” and because one person from the 2pm docket failed to appear and a warrant had been issued, the clerk surmised it could be that individual. Referencing the way the individual renamed themselves on Zoom, Respondent said “You almost hate to not talk to them if they can figure that out” but again declined

the clerk's request to bring the person in from the waiting room and said that they "would have to do the bench warrant docket."

E. Other than the incident identified in paragraph D above, the Commission's ongoing investigation confirmed that, following contact from the Commission, Respondent has substantially improved her practice and has discontinued the identified shortcomings.

## **II. AGREEMENT**

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

1. Commission on Judicial Conduct Rule of Procedure (CJCRP) 23(a) allows a respondent judge in a commission proceeding to stipulate to any or all of the allegations or charges in exchange for a stated discipline. Based upon the above stipulated facts, Respondent agrees that her conduct described above violated Canon 1 (Rules 1.1, 1.2, and 1.3) and Canon 2 (Rules 2.2, 2.5(A), 2.6(A), and Rule 2.9(C)) 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 1.3 requires that judges not abuse the prestige of judicial office. Rule 2.2 requires judges to perform all duties of office fairly, impartially and without bias or prejudice. Rule 2.5(A) requires that judges perform judicial and administrative duties competently and diligently. Rule 2.6(A) 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." Rule 2.9(C) prohibits judges from investigating facts in a matter pending or impending before that judge, and requires them to consider only the evidence presented and any facts that may be judicially noticed, unless expressly authorized by law.

3. Respondent agrees she violated the above canons by failing to properly advise criminal defendants of their constitutional rights at probation review hearings; by engaging in an ex parte investigation of a probation matter; by eliciting statements against interest from

criminal defendants; by recommending defendants use specific businesses; by presiding over cases in which a disqualification had previously been filed; and by failing to determine who was attempting to appear in court and not ensuring their right to be heard.

4. Respondent's practices at probation review were deficient. Prior to contact from the Commission, at probation review hearings, Respondent consistently failed to inform pro se defendants during probation review hearings of their right to counsel and/or of the perils of proceeding without counsel, failed to inform them of their right to remain silent, and failed to advise them of their right to contest allegations at a probation review hearing. The foregoing conduct violates Canon 1, Rules 1.1 and 1.2, and Canon 2, Rules 2.2 and 2.5(A) of the Code of Judicial Conduct. These practices were obviously contrary to the law, impacted significant constitutional, procedural, and other rights of defendants, and were part of an ongoing pattern or practice, and thus appropriately addressed as ethical misconduct. See *In re Hammermaster*, 985 P.2d 924 (1999).

5. When Respondent conducted an investigation into whether a defendant complied with conditions of probation, Respondent violated Canon 1, Rules 1.1 and 1.2, and Canon 2, 2.5(A), 2.6(A) and 2.9(C). Additionally, when Respondent recused from a case and then stated on the record that she intended to recommend significant jail time and further charges, even though she had recused, she called into question her impartiality and evidenced an improper embroilment in the matter, which violates Canon 2, Rule 2.2.

6. Respondent acknowledges that she elicited statements against interest during at least two arraignments of defendants charged with driving while license suspended. Respondent explained she had asked about the defendants' license status to better understand the posture of the case and their possibly mitigating efforts to become relicensed, but acknowledges that her questions elicited statements wherein the defendants could be admitting to an element of the crime. She states she did not intend to elicit statements against interest from the defendants.

7. Prior to contact from the Commission, Respondent regularly recommended specific private businesses from the bench for car insurance or licensing purposes, in violation Canon 1, Rules 1.1, 1.2 and 1.3. These recommendations did not result in personal gain to Respondent.

8. By presiding over hearings in cases from which Respondent had been previously disqualified, Respondent violated Canon 1, Rules 1.1 and 1.2, and Canon 2, Rules 2.2 and 2.5(A). Respondent acknowledges that she presided over such cases but did state she did not intend to improperly sit on a case from which she was disqualified. She admits that it is her responsibility to have checked the dockets to ascertain if she had been disqualified.

9. Respondent also routinely inquired into defendant's financial information in open court. Such in-court inquiry, in the presence of the prosecution, is contrary to RCW 10.101.020(3), which requires in part: "Any information given by the accused under this section or sections shall be confidential and shall not be available for use by the prosecution in the pending case."<sup>2</sup> The Commission is aware that many courts do not have regular public defense screeners and it is left to the judicial officer to make the determination of indigency. In light of the Respondent's claim that she followed what she believed had previously been the practice in her court regarding following up on unclear or incomplete financial information, this stipulation does not include a finding that Respondent's practice, as to this issue, warrants sanctions, but rather is highlighting the issue in order to put Respondent and other judicial officers on notice that failing to conduct such inquiry in confidence could violate the governing statute, court rule, and Code of Judicial Conduct.

10. The disregard for an individual attempting to navigate technology and appear in court violates Canon 1, Rules 1.1 and 1.2 and Canon 2, Rule 2.6(A).

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<sup>2</sup> Also, see CrRLJ 3.1(d)(3) Information given by a person to assist in the determination of whether he or she is financially able to obtain a lawyer shall be under oath and shall not be available for use to the prosecution in the pending case in chief.

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. Respondent engaged in a pattern of misconduct that went to the core duties of her judicial position. The misconduct occurred in the courtroom, during court proceedings, and while Respondent was acting in her official capacity. The nature of injury from Respondent's misconduct concerns the deprivation of accused persons' fundamental due process, statutory, and constitutional rights. It is impossible to determine the specific extent of any injury to any particular individual caused by Respondent's misconduct. However, failure to make the proper advisements may well have led multiple defendants on probation to proceed alone, foregoing defenses or presentation of mitigating factors. In the example of D.W., the defendant was jailed for a week, without the assistance of counsel who may have been able to present defenses or to offer the court reasons to mitigate or lessen the sentence. Conducting an ex parte investigation into a defendant's probation conditions evidences a loss of impartiality and an over enmeshment in the matter before Respondent and diminishes public confidence in the judge's integrity. By choosing not to hear from a person who seemed to be a litigant attempting to participate in a hearing via Zoom, Respondent abdicated her responsibility to ensure the right to be heard.

b. Service and Demeanor of Respondent. Respondent was a new judicial officer when she engaged in the misconduct identified herein and has no prior disciplinary history. Nonetheless, Respondent had the responsibility to educate herself about the basic, crucial demands of the office, and to ensure that she complied with constitutional and due process

requirements when presiding over criminal matters. Respondent should have been fully aware of the panoply of rights of each defendant and of the importance of clearly communicating those to each person who appears before the court, whether at arraignment or probation review hearings. Respondent immediately acknowledged the concerns when contacted by the Commission and has fully cooperated with the Commission's investigation and proceedings and, as evidenced by this agreement, has accepted that her conduct was inappropriate. Respondent has begun working with a mentor judge; she has changed her practices to personally ensure that defendants are advised of their rights and she has amended her practice so that she is aware when a notice of disqualification has been filed against her.

C. Based upon the stipulated facts, upon consideration and balancing of the factors set out in CJCRP 6(c), particularly Respondent's prompt acknowledgement of impropriety and commitment to correcting her errant practices, Respondent and the Commission agree that Respondent's stipulated misconduct shall be sanctioned by the imposition of a reprimand. A "reprimand" is a written action of the Commission that requires a respondent judge to appear personally before the Commission and 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 she will read and familiarize herself with the Code of Judicial Conduct in its entirety and provide written confirmation of that fact within 30 days of entry of this stipulation.

E. Respondent agrees that she will continue to work with a mentor judge who has been approved by the Commission Chair or Chair designate, who will provide any requested feedback to the Commission. Respondent also agrees that she will participate in at least four hours of ethics training relevant to the misconduct, approved in advance by the Commission Chair or Chair

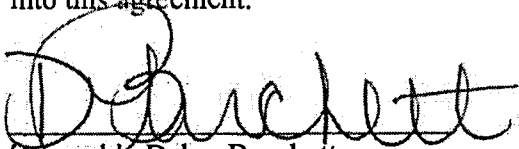


designate, at the National Judicial College, accredited law school or judicial seminar, or a similar institution or program. Respondent agrees she will complete such training (not at Commission expense) and will certify the successful completion of such training in writing within one year from the date this stipulation is accepted by the Commission.

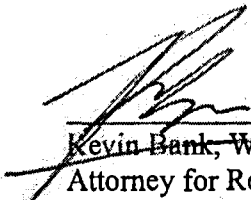
F. Respondent further agrees that she will not retaliate against any person known or suspected to have cooperated with the Commission, or otherwise associated with this matter.

G. Respondent agrees that she will not repeat such conduct in the future, mindful of the potential threat any repetition of her conduct poses not only to the individual defendants who appear before her, but also to public confidence in the integrity and impartiality of the judiciary and to the administration of justice.


H. Respondent was represented by attorney Kevin Bank in these proceedings. She affirms she has had an opportunity to consult with her attorney and voluntarily chooses to enter into this agreement.

  
Honorable Debra Burchett  
Cowlitz County District Court

4-23-2021  
Date

  
Kevin Bank, WSBA #28935  
Attorney for Respondent

4/23/2021  
Date


  
J. Reiko Callner  
Executive Director  
Commission on Judicial Conduct

4-23-2021  
Date

**ORDER OF REPRIMAND**

Based upon the above stipulation and agreement, the Commission on Judicial Conduct hereby orders Respondent Debra Burchett reprimanded for violating Canon 1 (Rules 1.1, 1.2 and 1.3) and Canon 2 (Rules 2.2, 2.5(A), 2.6(A) and 2.9(C)) 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 23rd day of April, 2021.

  
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Robert Alsdorf, Chair  
Commission on Judicial Conduct