

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

In Re the Matter of

The Honorable Susan Mahoney
Judge of the King County District Court

No. 10807-F-202

**STIPULATION, AGREEMENT
AND ORDER OF REPRIMAND**

The Commission on Judicial Conduct and Judge Susan Mahoney, King County District Court Judge, do hereby stipulate and agree as provided herein. This stipulation is entered pursuant to Article IV, Section 31 of the Washington Constitution and Rule 23 of the Commission on Judicial Conduct Rules of Procedure (CJCRP). The Commission has been represented in these proceedings by its Executive Director, J. Reiko Callner, and Judge Susan Mahoney has been represented by her attorney, Kurt M. Bulmer.

I. STIPULATED FACTS

A. Judge Susan Mahoney (“Respondent”) was at all times discussed herein a full-time judge of the King County District Court. She was elected to that position in 2010 and has been reelected twice since then. Respondent was selected by her bench-mates to be the court’s Assistant Presiding Judge in 2019 and the court’s Chief Presiding Judge in 2020, a position from which she voluntarily resigned on February 25, 2022. Respondent did not file for reelection in 2022. Her term of judicial service will, therefore, end on January 9, 2023.

B. On February 21, 2022, the Commission received the first of several complaints alleging Respondent, who is Caucasian, said the racial slur “n****r” during a February 9, 2022, Zoom video conference call with court staff. During the course of its confidential investigation of

these complaints, the Commission learned of two other occasions where it was alleged Respondent made racially insensitive and/or race-based stereotypical comments. Investigation of these three matters establish the following agreed facts.

1. On February 9, 2022, Respondent, as then King County District Court Presiding Judge, participated in an online video meeting with several high-level court staff members and the court's attorney for employment matters. The purpose of the meeting was to discuss potential disciplinary options to take against a court employee who, among other things, had used derogatory terms such as "Nazi" and "Brownshirt" with the apparent intent to demean and intimidate others in the workplace who sought to enforce the court's face mask policy. The subject employee's Department Director, "Ms. A," who is Black, was one of the individuals who participated in the meeting.

Near the end of the approximately hour-long meeting, in the context of addressing employee free speech considerations, Respondent argued that calling someone a "Nazi," or using the term "Nazi," would be unprotected speech just like using the term or calling someone a "n****r." Respondent later explained that her intent was to emphasize that using the term "Nazi" was a form of hate speech analogous to a racial slur and just as inexcusable in the workplace. After the meeting, in response to concerns raised about her use of the term, she explained that the word she uttered was not directed at any person nor was it used in a derogatory manner, but as an illustration or analogy to the unacceptable nature of the derogatory language the employee under disciplinary focus had used. Nonetheless, the witnesses present describe feeling shocked, upset, and offended at the time, and they have continued to experience those feelings when recounting the incident. Ms. A, the only person of color in the meeting, was deeply hurt by Respondent's comment, feeling an epithet was being directed at her, in part, because Respondent used Ms. A's

name just before or after uttering the word. Witnesses recall Respondent saying, “no offense, [Ms. A]” while Respondent recalls saying “as [Ms. A], said to me.” Ms. A also felt targeted because Respondent had been repeatedly giving Ms. A the same directives on how to proceed, so Ms. A felt she was being treated as incompetent. The other witnesses present shared Ms. A’s perception. Because of this meeting, Ms. A requested to have her job reconfigured so that she no longer had to report directly to Respondent. In the moment, Respondent did not perceive that she had inflicted harm or trauma, and the Commission has no basis to doubt Respondent’s description of her subjective perception or intentions.

2. In February 2021, during an introductory online video meeting between a new judge (a person of color) and a non-judicial court employee, who is Black, Respondent smiled and referred to the non-judicial court employee as someone who “loves watermelon.” Both the new judge and the court employee were deeply offended and shocked by Respondent’s comment, as it was their impression that Respondent was making light of a racist trope. Neither of them responded to the comment because they were caught off guard, embarrassed, and unsure what to say since Respondent was the court’s presiding judge at the time. In the moment, Respondent did not perceive that she had inflicted harm or offense. She later explained to the Commission that she considered the non-judicial court employee a long-time friend and they, in fact, had a mutual like of watermelon which they both brought to the office and would sometimes share. The employee agrees this was something they had shared in common. Respondent assured the Commission at no time were there any racial overtones intended by her comment.

3. In early 2022, in the context of scheduling calendars to handle the court’s backlog of traffic infraction and other cases due to COVID, Respondent made remarks in the presence of court employees suggesting the backlog was due to Asian women drivers in the area.

Recollections as to what precisely was said vary, but the employees who heard Respondent's remarks found them offensive and understood the remarks as referencing racial stereotypes. In the moment, Respondent did not perceive that she had inflicted harm or offense.

C. Prior to any disciplinary proceedings being initiated, Respondent voluntarily contacted the Commission by phone on March 8, 2022, to self-report that the N-word matter had arisen, that it seemed likely there would be an investigation, that she wanted to let the Commission know she accepted responsibility for saying the word and advised that she would fully cooperate with any investigation if one were to be conducted. She sent the Commission a statement in regard to her actions on March 9, 2022, which she later supplemented.

D. Following its confidential preliminary investigation, the Commission initiated disciplinary proceedings by serving Respondent with a Statement of Allegations on April 25, 2022. The Statement of Allegations alleged Respondent "may have violated Canon 1, Rules 1.1 and 1.2, and Canon 2, Rules 2.3 (A) and (B) and 2.8 of the Code of Judicial Conduct by using language that manifests bias or prejudice and/or is undignified and discourteous - including the use of racial slurs, epithets and stereotypes."

E. Respondent timely answered the Statement of Allegations.

1. In her Response regarding the use of the N-word, Respondent acknowledged she made a mistake and recognized she had caused pain and offense as a Caucasian person in the position of power in the court using such a triggering word regardless of the context or her intent. She explained that she had stepped down as Presiding Judge, had appeared before her fellow judges and apologized, voluntarily sought out additional education and attended courses on racial sensitivity, and that she had sent a written apology to Ms. A.

2. In her Response regarding the allegation that she referenced a Black employee as someone who loves watermelon, Respondent wrote that she did not have a specific recollection of making that remark, but acknowledged that something like that could have occurred because of her friendship with the person involved and their shared liking of watermelon. Respondent denied intending any racial connotations by her comment. She acknowledged she failed to grasp that, as she was the presiding judge introducing a Black employee in a formal work setting to a new judge of color (who was unaware of their relationship), her remark was naïve and insensitive and could raise reminders of a hateful racial stereotype. Respondent further advised that she is appalled that her remark caused the employee and the judge involved embarrassment and made things awkward for them.

3. In her Response regarding the allegation that she made remarks about “Asian drivers,” she denied making generalized statements about all Asian drivers, but recalled that she had made what she thought were instructive remarks to others relating to culturally relevant information she had gained from prior experience presiding over infraction calendars in order to encourage patience with Chinese woman drivers who had appeared in court. She further acknowledged her referencing the experience in the scheduling meeting in the manner she did was inappropriate. Respondent recognizes she may have failed to fully convey the information that she had intended, and that she bears responsibility for her comments that came across as offensive and gave the appearance of racial stereotyping.

II. AGREEMENT

A. Stipulated Misconduct. Based upon the above stipulated facts, Respondent agrees her actions violated Canon 1, Rules 1.1 and 1.2, and Canon 2, Rule 2.8(B), and created an appearance of violating Rule 2.3.

Rules 1.1 and 1.2 require judges to accept and comply with the Code of Judicial Conduct 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.¹ In assessing whether judges' words are appropriate or might give offense, judges need to consider not only their intent in uttering those words, but their impact on those hearing them. Particularly in a situation where, as here, the speaker is a Caucasian person who holds the highest position of power in a large court system, and in one instance, given that the word she uttered was an historically and currently weaponized word used to injure and oppress Black people, the impact on the listeners is of far greater importance than her subjective intention at the time. Rule 2.8(B) requires judges to be patient, dignified and courteous to all persons with whom they deal in their official capacity.²

By using the N-word, by referring to a Black person as someone who likes watermelon, and by making remarks based on the ethnicity of litigants, Respondent engaged in conduct that

¹ Canon 1 of the Code of Judicial Conduct, 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, 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." Canon 2, Rule 2.3(B), provides, "A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so." Comment [2] to Rule 2.3 explains, "Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts . . ."

was undignified and discourteous and had a significant negative effect on the public's confidence in the integrity of and respect for the judiciary. Her comments further created the appearance of impropriety since her words could be seen as manifesting bias regardless of her intent.

B. Sanction. Respondent and the Commission agree that a Reprimand as described in RCW 2.64.010(6) and the CJCRP is the appropriate level of sanction to impose in this matter. A reprimand is a written action of the Commission that requires a respondent 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 the imposition of 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 an intermediate level of disciplinary action the Commission can issue.

C. Considerations Regarding Stipulated Sanction. In accepting this stipulation, the Commission has taken into account the factors described in CJCRP 6(c).

1. The agreed facts include three instances where Respondent used language in a context that created the appearance of racial stereotyping. Respondent did not act out of conscious ill will when making her remarks but does acknowledge that she needs to reflect upon and learn to consider such racially-tinged comments from perspectives beyond her own.

2. Respondent promptly acknowledged her wrongful actions regarding her use of the N-word to her colleagues and the Commission; decided to step down as presiding judge; and apologized to others including a written apology to the employee involved. The Commission notes her remorse when learning that her "watermelon" remark caused her friend and a fellow judge distress and that she recognizes she was insensitive when she made her remarks. She also

acknowledges that by making any remark about a particular group of litigants in the manner that she did was inappropriate and resulted in her appearing to stereotype an ethnic group.

3. She acknowledges her actions were injurious to the integrity of and respect for the judiciary since her actions, no matter what her intention or the context, has the potential to lead someone to reasonably question her impartiality and thus the impartiality of the courts.

4. She has served for over 11 years as a full-time judge and is considered a dedicated and competent judicial officer. There have been no prior disciplinary actions initiated against her. The Commission takes into account the fact that she did not file to renew her term of office, which expires at the end of this year.

5. These incidents occurred in administrative settings outside of the courtroom; were not flagrant and intentional violations of her oath of office; were not done to exploit her office to satisfy personal desires; she has evidenced an effort to change or modify her conduct, and she has fully cooperated with the Commission's investigation.

6. She has explained that, at the relevant times identified in this matter, she was under an enormous amount of stress and was exhausted due to her having assumed the role of Presiding Judge of the King County District Court and other extraordinary personal family issues. That court, depending on any vacancies, has 26 judges, 300 employees and eight locations. Respondent became presiding judge at an extraordinary time, just as the COVID 19 crisis hit. She took over the role at a time when everything was shutting down and even the court was only open for emergency matters. She reports that nothing ran as it did before, there were Emergency Orders that kept changing the rules, lots of frightened people, special budget cycles, constantly shifting operations and calendars to deal with the impacts of the pandemic, safety protocols, consolidation of multiple jurisdictions with matters heard in eight locations to just three locations

and then as safety conditions permitted expanded back to eight again. Her stress and exhaustion likely contributed to her conduct in the matters addressed in this action.

7. In fashioning a sanction, the Commission is required also to consider the nature and extent to which the acts of misconduct have been injurious to other persons. When Respondent said the N-word in the supervisors' meeting, all others present were shocked, stunned, and especially concerned for Ms. A, while Ms. A described being emotionally thrown out of the meeting, embarrassed, humiliated, and hurt. She continued to feel deeply stressed and injured long after the fact, compounded by blaming herself for not speaking up in the moment. As a professional with decades' experience, she was particularly appalled that the presiding judge would be so careless and injurious. The incoming judge in the "watermelon" incident was stunned and embarrassed, and deeply concerned for the subject employee. He was troubled that he did not know how to respond in the moment. The subject employee, in turn, was embarrassed and upset, blaming herself for the incident. The witnesses to the comments about the Asian drivers were troubled and concerned. A commonality of all this is the inherent difficulty of subordinates confronting a person with greater power about that person's inappropriate words or behavior and their negative impact.

D. Balancing. Upon balancing the above considerations, the Commission is satisfied that the sanction imposed in this stipulation is appropriate to the level of culpability and is sufficient to restore and maintain the dignity and honor of the position and to protect the public by assuring that the judge will refrain from acts of misconduct in the future.

E. Since this matter came up Respondent has taken additional classes and has reviewed articles on the issue of racial sensitivity. She agrees that prior to seeking or serving in a judicial capacity following the completion of her current term in office, she will complete a course of study focused on the impact of inherent bias and microaggressions, approved in advance by the Commission Chair or the Chair designate. In the event Respondent and the Commission Chair or the Chair designate, cannot agree on a course of study, the issue can be submitted to the full Commission for review and a decision on a course of study.

F. Respondent agrees that she will promptly read and familiarize herself 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.


Standard Additional Terms and Conditions

G. Respondent further agrees she will not retaliate, or appear to retaliate, against any person known or suspected to have cooperated with the Commission, or otherwise associated with this matter. By doing so she does not waive any rights she may have for actions taken independent of the Commission's investigation.

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

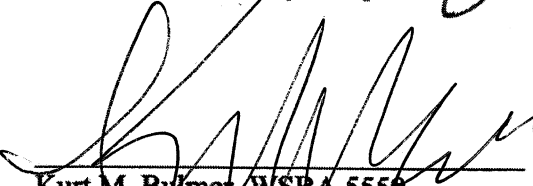
I. Respondent has been represented by attorney Kurt M. Bulmer in this disciplinary proceeding. She affirms she enters into this stipulation after having an opportunity to consult with her counsel.

J. Respondent agrees that by entering into this stipulation and agreement, she hereby waives her 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.




Hon. Susan Mahoney, Respondent

9/2/2022
Date



Kurt M. Bulmer, WSBA 5559
Attorney for the Respondent

9/2/22
Date



J. Callner, Executive Director
Commission on Judicial Conduct

September 6, 2022
Date

ORDER OF REPRIMAND

Based upon the above stipulation and agreement, the Commission on Judicial Conduct hereby orders Respondent Susan Mahoney REPRIMANDED for violating Canon 1, Rules 1.1 and 1.2 and Canon 2, Rule 2.8(B), 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 9th day of September, 2022



Robert Alsdorf, Chair
Commission on Judicial Conduct