

SEP -8 2023

**COMMISSION ON JUDICIAL CONDUCT**

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

In Re the Matter of

The Honorable Terry M. Tanner  
Judge of the Benton County District Court

NO. 11211-F-207

**STIPULATION, AGREEMENT  
AND ORDER OF CENSURE WITH  
RECOMMENDATION OF  
SUSPENSION**

The Commission on Judicial Conduct and Judge Terry M. Tanner hereby stipulate and agree as provided for herein. This stipulation is entered pursuant to Article IV, Section 31(7) of the Washington Constitution and 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 Tanner has represented himself.

**I. STIPULATED FACTS**

A. Judge Terry M. Tanner (“Respondent”) is now, and was at all times referred to in this document, a judge of the Benton County District Court. Respondent has served in that capacity since 2009.

B. Respondent was previously sanctioned by the Commission in 2018, after he was convicted of Driving Under the Influence of Alcohol (DUI). (See attached Stipulation, Agreement and Order of Reprimand in In re Tanner, CJC No. 8889-F-180 (2018).) He complied with the requirements of that underlying criminal case, which did not include intensive alcohol treatment.

C. On January 2, 2023, Respondent was again arrested for Driving Under the Influence of Alcohol (DUI), in violation of RCW 46.61.502. According to police reports, on January 2nd at approximately 6:30 p.m., a citizen witness observed a vehicle stuck and high-centered on a

concrete block in Richland, Washington. The witness found Respondent in the driver's seat, with the car in drive and the front wheels of the car spinning. The witness helped Respondent out of the car and noticed he seemed highly intoxicated. Respondent told the witness he had been drinking at a nearby restaurant-bar. When police arrived at the scene, Respondent denied driving or owning the car. He declined to perform field sobriety tests and a portable breath test. Based on the witness' statement and the judge's obvious level of intoxication (he was described as swaying side-to-side when seated and needing support when standing), Respondent was arrested for DUI. In route to the police station, Respondent fell asleep in the patrol car. At the police station, breath tests registered his BAC as .220/.225 and .232/.237.

D. Following his arrest, Respondent spent a night in jail and was charged with DUI in Benton County District Court on January 3, 2023. (Cause No. 3A0068394.) To avoid potential conflicts of interest, the case was transferred to the Yakima County District Court.

E. On January 4, 2023, Respondent called the Commission's office to self-report his January 2, 2023, DUI arrest, and to advise the Commission he was going to immediately enter intensive treatment for alcoholism.

F. On January 5, 2023, Respondent voluntarily checked himself into Sundown M. Ranch, a substance use disorder treatment facility located in Yakima, Washington, to undergo in-patient treatment for alcoholism. Respondent successfully completed a 28-day in-patient treatment program and is currently undergoing outpatient treatment services through Sundown M. Ranch.

G. On February 28, 2023, Respondent entered into a deferred prosecution for the charge of DUI in Cause No. 3A0068394. The terms of the deferred prosecution require Respondent to comply with and complete a two-year treatment plan through Sundown M. Ranch followed by three years of probation monitoring. Throughout his five-year deferred prosecution period, Respondent must abstain from the use of alcohol, must submit to urinalysis or breath tests at the direction of the probation department, court or treatment provider, commit no further violations, and must provide monthly progress reports to the court.

H. Following an independent investigation, and after resolution of the underlying criminal case, the Commission formally initiated disciplinary proceedings against Respondent pursuant to CJCRP 17(c)(3) by serving him with a Statement of Allegations on May 2, 2023. The Statement of Allegations alleged that Respondent may have violated Canon 1, Rules 1.1 and 1.2 of the Code of Judicial Conduct by driving under the influence of alcohol and/or drugs, in violation of RCW 46.61.502, as set forth in Case No. 3A0068394. The Statement of Allegations further alleged the same conduct may have violated the terms and conditions of his prior stipulation and agreement with the Commission in CJC No. 8889-F-180 (2018).

I. Respondent submitted a written response to the Statement of Allegations on June 9, 2023. Respondent acknowledged violating the Code and breaching his prior stipulation and agreement as alleged. He added that he now fully recognizes that he suffers from alcohol dependency and readily adopts all requirements for treatment and ongoing sobriety.

## **II. AGREEMENT**

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

1. Based upon the above stipulated facts, Respondent agrees that he violated Canon 1, Rules 1.1 and 1.2 of the Code of Judicial Conduct by committing the criminal offense of Driving Under the Influence of Alcohol and/or Drugs on January 2, 2023.

2. Rules 1.1 and 1.2 of the Code of Judicial Conduct express the foundational principles of the Code: that because of the special position judges hold in our society and their central role in preserving the principles of justice and the rule of law, their conduct must at all times, in both their personal and professional lives, be above reproach in order to preserve public confidence in our legal system. Thus, Rule 1.1 requires judges to “comply with the law, including the Code of Judicial Conduct,” and Rule 1.2 requires judges 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.”

3. Any time a judge is convicted of a criminal offense, public respect for the integrity of the judiciary and the administration of justice suffers. This is especially true when the judge, like Respondent here, violates a law that he regularly adjudicates as a judicial officer.

B. By committing DUI, Respondent also violated the terms of his 2018 agreement with the Commission, wherein he agreed he would not engage in similar misconduct in the future.

C. Imposition of Sanction.

The sanction imposed by the Commission must be commensurate to the level of Respondent'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. In determining the appropriate level of discipline to impose, the Commission takes into account those factors listed in CJCRP 6(c).

1. Characteristics of the Misconduct. Driving under the influence is a serious offense that can result in great bodily injury. Respondent's conduct was particularly alarming given his extreme degree of inebriation. As a district court judge, DUI and alcohol-related offenses are some of the most serious cases over which Respondent frequently presides, so there is a close nexus between the off-bench misconduct here and Respondent's status as a judge. The public rightfully expects that judges will comply with the criminal laws they enforce upon others. This reality, and the notoriety of Respondent's arrest and prosecution, significantly undermines public respect for the judiciary. This incident manifested the precise criminal conduct for which he was previously sanctioned by the Commission, which he expressly agreed not to repeat. Finally, Respondent's initial statements to the arresting officer that Respondent was not driving and did not own the vehicle in question were untruthful. Such failure to be forthright, even when intoxicated, is a serious matter for a judicial officer. It further erodes public confidence in Respondent's integrity and undermines public respect for the judiciary. In mitigation, the conduct at issue here took place outside the courtroom in Respondent's private life, and Respondent did not reference his status as a judge or otherwise attempt to exploit his judicial office.

2. Service and Demeanor of the Judge.

Respondent has served on the bench since 2009. He is acknowledged by the bench and bar in his community as a capable and respected judge. The Commission's investigation yielded no indication that his alcoholism affected his work as a judge. Respondent has acknowledged the acts occurred and accepted responsibility for them. He promptly contacted the Commission to report this incident and indicated his willingness to cooperate with this process and abide by the decision of the Commission. Respondent has been extremely open and candid with the Commission about his alcoholism and by all accounts has fully embraced his responsibility to entirely end drinking or face the end of his career, and quite possibly accelerating the end of his life. By entering into this stipulation and agreement, and having entered into a deferred prosecution of the underlying criminal charge of DUI, Respondent has accepted responsibility for his conduct and has evidenced a sincere effort to avoid repeating the behavior that led to this disciplinary action. The conditions agreed to in this document and the fact that Respondent is on a five-year deferred prosecution with strict compliance monitoring in the district court matter gives the Commission added assurances the misconduct will not recur, in that Respondent faces serious repercussions beyond the end of his judicial career, in the event of a violation of this agreement and/or the terms of his probation.

3. The Commission's cases in recent years sanctioning judges charged or convicted of similar offenses have usually resulted in the sanction of reprimand. The Commission has expressly noted that, were there other aggravating factors, a higher sanction might be warranted. This matter presents such circumstances warranting a higher sanction. As noted, Respondent was highly intoxicated and drove his car onto a cement barrier. He was not truthful with the police during the investigation. Most significantly, however, is that this is the second time Respondent has committed DUI since being a judge. All these factors could reasonably justify a sanction of removal from the bench, and either the Commission or the State Supreme Court would be justified in declining to accept this proposed stipulation. On the other hand, Judge Tanner has served well as a judicial officer and has credibly represented that he is ready to accept responsibility and live the rest of his life in complete sobriety. Whether to require his removal

from the bench or to afford him a path to redemption under these circumstances is a complex decision.

With the notable exception of these two incidents of driving while intoxicated, Respondent is recognized as a dedicated, competent, hard-working judge who is well-liked by those he works with. Unlike some other criminal offenses, DUI is a crime frequently committed by people in all walks of life. Dedicated, competent, hard-working, and well-liked people who drive under the influence of alcohol are equally as dangerous as anyone else who drives under the influence. On the other hand, as therapeutic treatment courts across the state have shown, even recidivist criminal defendants, given the chance and incentives to address their underlying addictions, can make the deep-seated changes required to end their anti-social conduct and resume or retain their place as productive members of society.

Since his latest arrest and full embrace of the reality of his alcoholism, Respondent has manifested in word and deed his complete acceptance of his responsibility to change, and has manifested without excuses entirely positive responses to treatment. He has acknowledged that his addiction was affecting every level of his life, though he was consistently recognized as a good judge and there was no articulable indication that his alcoholism affected his judicial performance. He has expressly pledged that his experience, while it broadened his human understanding of these offenses, will not affect his judicial performance – neither to make him more lenient nor more harsh with people charged with DUI or other alcohol-related offenses. He has already begun the practice to offer to recuse from DUI cases at the request of any party to a case that comes before him. During the five years' probation he is under the jurisdiction of the criminal court, he has agreed to submit to random breath tests at the request of the CJC within five hours of receiving the request. He understands he must, in conjunction with the Commission case, comply with all aspects of his probation in the DUI case. Crucially, he has agreed that he will promptly self-report to the Commission and promptly submit his resignation from the bench if he consumes any quantity of alcohol in any location.

4. Weighing and balancing the above factors, Respondent and the Commission agree that Respondent's stipulated misconduct shall be sanctioned by the imposition of a CENSURE with a recommendation to the State Supreme Court that the Respondent be suspended without pay for a period of thirty (30) days. A "censure" is a written action of the Commission that finds the conduct of the Respondent violates a rule of judicial conduct, detrimentally affects the integrity of the judiciary, and undermines public confidence in the administration of justice. Censure is the most severe disciplinary action the Commission can issue. If approved by the Supreme Court, the thirty-day suspension will take effect within one week of the filing of the Supreme Court's order or as they may otherwise direct. During the term of suspension, Respondent is prohibited from exercising any judicial power or authority.

D. Respondent agrees he will strictly comply with all the terms of his deferred prosecution in Cause No. 3A0068394, and regularly provide proof of ongoing compliance to the Commission.

E. Respondent agrees to complete the following remedial measures and abide by the following conditions:

1. Comply fully with all aspects of the criminal case (Case No. 3A0068394) and show ongoing proof of compliance to the Commission as directed.

2. While under the jurisdiction of the criminal court, Respondent will submit to any alcohol test randomly requested by the Commission within five hours of receipt of the request and share the results with the Commission.

3. While under the jurisdiction of the criminal court, Respondent will offer to recuse at the onset of every DUI case at the request of any party to the case, without requiring a motion.

4. For the remainder of his term of service as a judge, he will absolutely refrain from the consumption of alcohol. Should he consume any quantity of alcohol in any location, he will promptly self-report to the Commission, and will also promptly submit his resignation from the bench.

5. Public Presentations. In further pursuit of the goal of regaining the trust and confidence of the public, within three years of entry of this agreement, Respondent shall participate, and provide proof thereof to the Commission, as a speaker in no less than three public appearances on matters related to his stipulated misconduct, presented either to community organizations or to Washington judicial associations. The venue of the presentations must be approved in advance by the Chair of the Commission and the content of the presentation approved afterward in order for Respondent to receive credit for these presentations.

6. Respondent agrees he will promptly read and familiarize himself with the Code of Judicial Conduct in its entirety, and will submit a sworn statement or declaration to the Commission within 30 days of entry of this agreement.

F. Respondent agrees he will not repeat such conduct in the future, 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.

G. Respondent has represented himself in these proceedings; he affirms he enters into this stipulation after having had an opportunity to consult with counsel.

H. Standard Additional Terms of Commission Stipulation

1. Respondent further agrees he 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.

2. 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

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Conduct Rules of Procedure and Article IV, Section 31 of the Washington State Constitution in this proceeding.



Honorable Terry M. Tanner  
Respondent

7-8-2023  
Date



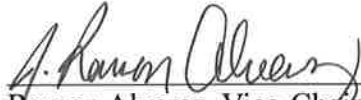
J. Reiko Callner  
Executive Director  
Commission on Judicial Conduct

July 13, 2023  
Date

## ORDER OF CENSURE

Based upon the above stipulation and agreement, the Commission on Judicial Conduct hereby orders Respondent Terry M. Tanner Censured for violating Canon 1 (Rules 1.1 and 1.2) of the Code of Judicial Conduct. The Commission further recommends that Respondent be suspended from judicial office without pay for a period of thirty (30) days as set forth above. Respondent shall not engage in such conduct in the future and shall fulfill the terms of the agreement as set forth above.

DATED this 8<sup>th</sup> day of September, 2023.

  
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Ramon Alvarez, Vice-Chair  
Commission on Judicial Conduct

BEFORE THE COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON

FILED  
DEC - 7 2018  
COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of: )  
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The Honorable Terry M. Tanner )  
Judge of the Benton County District Court )  
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CJC No. 8889-F-180

**STIPULATION, AGREEMENT  
AND ORDER OF REPRIMAND**

The Commission on Judicial Conduct and Judge Terry M. Tanner hereby stipulate and agree as provided for herein. This stipulation is entered pursuant to Article IV, Section 31(7) of the Washington Constitution and Rule 23 of the Commission on Judicial Conduct Rules of Procedure.

The Commission is represented in these proceedings by its Executive Director, J. Reiko Callner, and Judge Tanner is represented by Attorney Scott Johnson.

**I. STIPULATED FACTS**

A. Judge Terry M. Tanner (“Respondent”) is now, and was at all times referred to in this document, a judge of the Benton County District Court. Respondent has served in that capacity since 2009.

B. On March 6, 2018, Respondent was arrested for Driving Under the Influence (DUI). The investigating officers’ reports indicate that Respondent admitted he had been drinking beer while watching a basketball game at a Kennewick restaurant, after which Respondent attempted to drive home. However, on a road near his house, Respondent failed to negotiate a turn and struck large landscaping rocks which surround a sign indicating the name of the neighborhood. His car came to rest against the rocks and passersby called 911. Respondent was cooperative with the responding officers and made no mention of his judicial status, although the responding officers were independently aware that he was a judge. Respondent was transported to a local medical facility where a blood draw was performed.

C. Respondent was charged with DUI in Benton County District Court but after his initial appearance, the case was transferred to Yakima County. At his first appearance in that court,

and before the blood test results were received, Respondent pled guilty to DUI as charged and was sentenced on April 13, 2018, to serve 15 days of electronic home monitoring, to pay fines, costs and assessments, to complete an alcohol evaluation and comply with any recommended treatment and attend a DUI victim's panel. The prosecution and defense counsel in this case noted to the Commission that the sentence imposed was a typical standard sentence for a first time DUI offender.<sup>1</sup>

D. Through his attorney, Scott Johnson, and then personally, Respondent reported his arrest to the Commission on March 8, 2018.

## **II. AGREEMENT**

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

1. Based upon the above stipulated facts, Respondent agrees that he violated Canon 1, Rules 1.1 and 1.2, of the Code of Judicial Conduct.

2. Rule 1.1 requires judges to "comply with the law, including the Code of Judicial Conduct." Rule 1.2 requires judges 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."

3. Respondent agrees that he violated the foregoing Code provisions by committing the criminal offense of Driving Under the Influence of Alcohol and/or Drugs.

### **B. Imposition of Sanction.**

The sanction imposed by the Commission must be commensurate to the level of Respondent'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. In determining the appropriate level of discipline to impose, the Commission takes into account those factors listed in CJCRP 6(c).

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<sup>1</sup> The blood test results, when eventually received, indicated a blood alcohol concentration of .20, which is over the legal limit of .08 in Washington State. Because the results had not yet been processed at the time of the plea, the prosecutor and defense stipulated to a guilty plea to DUI without a test result.

1. Characteristics of the Misconduct. This is an isolated incident. Respondent has no prior criminal history and no prior judicial misconduct history. The misconduct occurred outside the courtroom, in Respondent's private life. Driving under the Influence (DUI) is a serious offense that can result in great bodily injury. It is reasonable for the public to expect that judges will comply with the criminal laws they enforce upon others. Respondent's actions undermine public respect for the judiciary as a whole.

2. Service and Demeanor of the Judge. Respondent has acknowledged the acts occurred. By entering into this agreement and having pleaded guilty to the underlying criminal charge of DUI, he has accepted responsibility for his conduct and has evidenced an effort to avoid repeating the behavior that led to this disciplinary action. He promptly self-reported this incident, and has fully cooperated with the Commission throughout these proceedings. The judge has served on the bench for nine years and has no other disciplinary action.

C. Accordingly, weighing and balancing the above factors, 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 judge to appear personally before the Commission and finds that the conduct of the Respondent is a violation of the Code of Judicial Conduct. It requires that the judge follow a specified corrective course of conduct. Reprimand is an intermediate level of discipline.

D. Respondent agrees he will strictly comply with all the terms of his probation in Yakima County District Court Cause No. 8Z0309355, and promptly provide proof of compliance to the Commission.

E. Respondent agrees to complete the following remedial measures.

1. Public Presentations. In further pursuit of the goal of regaining the trust and confidence of the public, within three years from the date hereof, Respondent shall participate, and provide proof thereof to the Commission, as a speaker in no less than five public appearances on matters related to his stipulated misconduct, presented either to community organizations or to

Washington judicial associations. The venue of the presentations must be approved in advance by the Chair of the Commission and the content of the presentation approved afterward in order for Respondent to receive credit for these presentations.

2. Respondent agrees he will promptly read and familiarize himself with the Code of Judicial Conduct in its entirety, and will submit a sworn statement or declaration to the Commission within 30 days of entry of this agreement.


F. Respondent agrees he will not repeat such conduct in the future, 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.

G. Respondent is represented in these proceedings; he affirms he enters into this stipulation after consultation with his counsel.

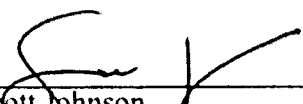
H. Standard Additional Terms of Commission Stipulation

1. Respondent further agrees he 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.

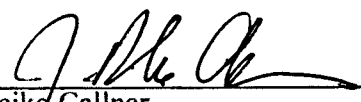
2. Respondent agrees that by entering into this stipulation and agreement, he hereby waives his procedural rights and appeal rights pursuant to the Commission on Judicial Conduct Rules of Procedure and Article IV, Section 31 of the Washington State Constitution in this proceeding.

  
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Honorable Terry M. Tanner  
Respondent

11-28-2018  
Date

 27809  
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Scott Johnson  
Counsel for Respondent

11-28-18  
Date

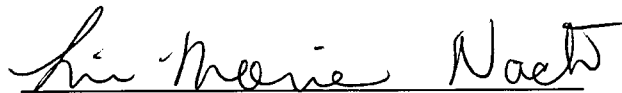
  
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J. Reiko Callner  
Executive Director  
Commission on Judicial Conduct

11-30-18  
Date

## ORDER OF REPRIMAND

Based upon the above stipulation and agreement, the Commission on Judicial Conduct hereby orders Respondent Judge Terry M. Tanner REPRIMANDED for violating Canon 1 (Rules 1.1 and 1.2) of the Code of Judicial Conduct. Respondent shall not engage in such conduct in the future and shall fulfill all of the terms of the Stipulation and Agreement as set forth therein.

DATED this 7 day of December, 2018.

  
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Lin-Marie Nacht, Chair  
Commission on Judicial Conduct