

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

In Re the Matter of  
The Honorable Tracy S. Flood  
Judge of the Bremerton Municipal Court

CJC No. 11005-F-204

**ORDER ON MOTION FOR  
ISSUANCE OF SUBPOENA**

On July 3, 2024, Disciplinary Counsel filed a Motion for Issuance of Subpoena for Respondent’s medical records. Disciplinary Counsel contends that Respondent has failed to comply with the Presiding Officer’s order requiring that Respondent supply medical information substantiating her representations about her medical conditions. Disciplinary Counsel argues that Respondent has failed to comply with this obligation on numerous occasions.

Respondent’s counsel filed a Response to the motion on July 10, 2024. Respondent’s counsel objected, contending that (1) HIPAA prevents disclosure of Respondent’s health information, (2) the records are privileged, (3) production of the records imposes an undue burden, (4) the records are irrelevant to the underlying allegations against Respondent and these proceedings, and (5) the subpoena would violate Respondent’s right to privacy.

Disciplinary Counsel refuted each of these points in her Reply, filed July 18, 2024.

Also awaiting resolution is Respondent’s request to have three of her submissions filed under seal: (1) June 18 Update Submission; (2) July 15 Update Submission; and (3) July 19, 2024, Supplemental Declaration of Judge Flood.

For the reasons explained below, Disciplinary Counsel’s motion for a subpoena is granted and Respondent’s request for sealing is denied in part, and granted in part.

The chronology of these proceedings, including the history of long delays, has been set forth by the Presiding Officer in previous orders. *See* Orders dated May 2, 2024, and May 17, 2024.

1 Relevant to the Disciplinary Counsel’s Motion for a Subpoena, the following facts bear  
2 repeating. Merely days from the fact-finding hearing (long-scheduled for March 18, 2024, after  
3 having been continued from the original date in December 2023), Respondent contended that  
4 she had potentially dire medical conditions which made it impossible to participate in the  
5 hearing. No specific substantiating documents were provided, but after listening to the  
6 presentations from her then-counsel, the presiding officer understood that these health issues  
7 were extremely serious and that it would be difficult, if not impossible, for Respondent to be  
8 adequately represented. *The potential seriousness of the medical issues as it was orally conveyed*  
9 *to the Presiding Officer cannot be over-stated.* Moreover, based on the seriousness of the  
10 purported medical issues, and the impact on her representation (as reported by her counsel), there  
11 was also serious concern that Respondent could be rendered incapable of continuing to carry out  
12 her official duties. It was explained that no documents supporting the extent or seriousness of  
13 these medical issues could be provided because of the recency of the medical issues and the  
14 difficulty of retrieving records from the Veterans Affairs Administration. However, supporting  
15 documentation was promised.

16 Accordingly, with the clear understanding that supporting documentation would be  
17 provided, the Presiding Officer struck the scheduled fact-finding hearing in an Order dated  
18 March 7, 2024. The hearing was continued to a time uncertain, contingent on the outcome of  
19 further medical diagnosis of Respondent.

20 A review hearing was set for April 16, 2024, and Respondent was required in that Order  
21 to “file a status report of the progress the medical issues” (with permission to file the report under  
22 seal based on a *Bone-Club* analysis.) prior to the review hearing. Respondent did not comply  
23 with the Order—no status report of any kind was filed prior to the April 16 review hearing.

24 At the April 16 review hearing, both counsel for Respondent announced their intention  
25 to withdraw from the case. Thus, the Presiding Officer set a new review hearing for May 8,  
26 2024. Respondent, pro se, moved to reset the May 8, 2024, review hearing claiming multiple

1 medical appointments but, again, no supporting medical documentation was provided.  
2 Disciplinary Counsel objected in the absence of such documentation, and the Presiding Officer's  
3 Order dated May 2, 2024, noted the case had been overly delayed, stating:

4           ...the Presiding Officer is sensitive to the health issues described in  
5 Respondent's declaration. But the Presiding Officer also notes that  
6 Respondent apparently remains actively conducting her official  
7 judicial duties on a daily basis. Considering Respondent remains  
8 able to conduct these duties, it is unreasonable for Respondent to be  
9 unavailable to attend to this disciplinary matter. Further extended  
10 continuances without proof of substantive causes are unacceptable.

11           The May 2, 2024, Order gave strict and narrow directions to the further scheduling of the  
12 review hearing, now set for May 14, 2024. Again, the Presiding Officer required supporting  
13 documentation of health issues to be filed "At least 24 hours prior to the date of the hearing."

14           The review hearing took place on May 14, 2024. No supporting medical documentation  
15 of any kind was submitted.

16           Respondent, now unrepresented, appeared at the May 14 hearing. Respondent requested  
17 that no fact-finding date be set, but instead, another review date be scheduled. Respondent also  
18 requested that the hearing be closed to the public so she could orally present her sensitive  
19 personal medical information. At that point, the Presiding Officer conducted a *Bone-Club*  
20 analysis. At least one member of the public expressed concern about closing the proceedings,  
21 concern about further continuances, and the interests of the community in the ultimate resolution  
22 of the case. At the conclusion of the hearing, which was partially sealed, the Presiding Officer  
23 issued a detailed order on May 17, 2024, ruling that in order to accommodate Respondent's  
24 potential health issues and search for new counsel while balancing the need for resolution of the  
25 case, the fact-finding hearing be set for October 21, 2024. Notably, Respondent had still not  
26 submitted any documentation supporting her serious health conditions.

          Thus, given that Respondent continued to underscore her need for a delay based on her  
serious health conditions while, at the same time, suggesting she intended to continue her official

1 duties, the May 17, 2024, Order required Respondent to “**provide monthly Update**  
2 **Submissions on the progress of her health and work status**” [emphasis in original]. The May  
3 17 Order went on to specify that

4 Each Update Submission shall be in writing and shall include (A) a summary  
5 of her health issues, including written documentation substantiating  
6 appointments, tests, procedures, and treatment plans; and (B) an update on  
7 performance of official work duties, including an estimate of hours expended  
8 on these duties. (Respondent is reminded that the Presiding Officer has twice  
9 previously ordered a written update of her health issues (March 7, 2024,  
10 Order and May 2, 2024, Order). On neither occasion was the order complied  
11 with.)

12 Update submissions were required for June 17, 2024, July 15, 2024, August 12, 2024,  
13 September 9, 2024, and September 20, 2024.

14 Respondent’s June Update Submission was filed a day late on June 18, 2024. The  
15 Submission contained no information about Respondent’s health, diagnosis, or treatment,  
16 beyond noting, without documentation, the dates of several appointments (without any  
17 description of the nature of the appointments). The Submission included a letter from a Nurse  
18 Practitioner that provided only general information confirming that Respondent was a patient at  
19 the clinic with multiple (unspecified) appointments that would require her to miss work and  
20 unspecified procedures that were being scheduled. Respondent also provided her own  
21 declaration attaching her motion for a Writ of Prohibition to the State Supreme Court, seeking  
22 to terminate the Commission’s proceeding and stating, without motion, “I believe these  
23 proceedings should be stayed pending the outcome of the Writ of Prohibition.” Respondent  
24 requested the Submission be sealed.

25 On July 15, 2024, Respondent timely filed her second Update Submission. This  
26 Submission included the Declaration of Judge Tracy Flood and attached a three-page “Continuity  
of Care Document” from an eye doctor (that appeared to already contain redactions for  
Respondent’s DOB and home address). Respondent requested the Submission be sealed in its  
entirety.

1           On July 19, 2024, Respondent filed a “Supplemental Declaration of Tracy Flood.” In  
2 this declaration, Respondent argued against Disciplinary Counsel’s Motion for Subpoena,  
3 contending that “the CJC request for a subpoena is harassing because of my unforeseen medical  
4 issues that took me to the emergency room and warranted a continuance. Discovery is  
5 completed. This case is two years old.” The Supplemental Declaration attached two exhibits:  
6 (1) the Presiding Officer’s May 17, 2024, Order, and (2) a two-page screenshot of an apparent  
7 unidentified medical appointment without further explanation. Respondent requested the  
8 Supplemental Declaration be sealed in its entirety.

9                   DECISION

10           It bears repeating—the March hearing date was originally continued based largely on the  
11 oral representations of extremely serious medical conditions that were affecting Respondent’s  
12 ability to participate in the proceedings and, critically, her counsel’s representations that these  
13 conditions were affecting their ability to represent her. Although the Presiding Officer agreed  
14 to continue the long-scheduled fact-finding based on these oral representations, supporting  
15 documentation was promised and, more importantly, ordered to be provided.

16           Respondent has failed to comply with these orders on every occasion. Despite the  
17 passage of four months and multiple orders, nothing actually substantiating the March oral  
18 representations of these health conditions has been provided. The only concrete information that  
19 has been provided is that Respondent appears to be fully performing her official duties in contrast  
20 to the hardships she represented when she sought a continuance of these proceedings. The  
21 unfortunate and unavoidable conclusion is that Respondent is intentionally not cooperating with  
22 the Commission’s proceeding as is required under the Code, and is a potential aggravating factor  
23 in the event of a finding of misconduct. (*See* Canon 2, Rule 2.16 (A) Cooperation with  
24 Disciplinary Authorities, “A judge shall cooperate and be candid and honest with judicial and  
25 lawyer disciplinary agencies” and CJCRP 6(2)(E) Whether the judge cooperated with the  
26 commission investigation and proceeding.)

1 Disciplinary Counsel’s Motion for a Subpoena will be granted.

2 Respondent’s request to seal her Update Submissions and Declarations will be denied in  
3 part and granted in part, as follows:

4 June 18 Update Submission:

5 Bearing in mind the objection articulated on behalf of members of the public to complete  
6 sealing of documents mentioning Respondent’s health concerns and balancing the rights of the  
7 public with Respondent’s right to privacy, no part of the June 18 Update Submission will be  
8 sealed. The Presiding Officer finds no aspect of this document to be sufficiently private to justify  
9 its sealing.

10 July 15 Update Submission:

11 This Submission consists of the Declaration of Tracy Flood and an attached three-page  
12 “Continuity of Care” Document. Balancing the rights of the public with Respondent’s right to  
13 privacy, the Presiding Officer finds no aspect of Declaration of Tracy Flood to be sufficiently  
14 private to justify its sealing. The Presiding Officer reaches a different conclusion for the three-  
15 page “Continuity of Care” Document that is attached to the Declaration. On balance, this three-  
16 page attachment contains private medical information that outweighs the public’s rights – the  
17 document will be sealed.

18 July 18 Supplement Declaration of Tracy Flood:

19 This document consists of the Supplemental Declaration of Tracy Flood and two  
20 attachments, (1) the Presiding Officer’s May 14 Order and (2) a two-page screenshot of an  
21 unidentified medical appointment without further explanation. Balancing the rights of the public  
22 with Respondent’s right to privacy, no part of the July 18 Supplemental Declaration of Tracy  
23 Flood will be sealed. The Presiding Officer finds no aspect of this document to be sufficiently  
24 private to justify its sealing.

25 Collectively, the information included in these submissions fails to comply with the  
26 Presiding Officer’s orders. Respondent has been ordered to provide detailed documentation

1 substantiating the oral representations made to the Presiding Officer on multiple occasions.  
2 Respondent ignored these orders at first, and now, although Update Submissions have been  
3 provided, they are devoid of meaningful information that remotely comports with the Presiding  
4 Officer’s orders.

5 Accordingly, Disciplinary Counsel’s Motion for a Subpoena will be GRANTED.  
6 Respondent’s position that her medical condition is irrelevant to these proceedings and her  
7 characterization of attempts to obtain her compliance with the Presiding Officer’s orders as  
8 “harassing,” given this foregoing history, are not well-taken. She has placed her medical  
9 condition directly at issue in delaying the course of this proceeding. Moreover, the Presiding  
10 Officer is persuaded by the arguments raised in Disciplinary Counsel’s Reply and concludes  
11 there is no viable privilege, privacy right, or HIPAA prohibition to the Subpoena under these  
12 circumstances.

13 Three more Update Submissions have been ordered—August 12, 2024, September 9,  
14 2024, and September 20, 2024. If these Submissions are equally deficient, the Presiding Officer  
15 will consider the issuance of further Subpoena as needed.

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