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**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 RE 5/14/24 REVIEW  
HEARING – Setting of Fact-Finding  
Hearing and Imposition of Interim  
Update Submissions by Respondent**

A review hearing was conducted via Zoom on May 14, 2024. The May 14 date was set by Presiding Judge Erik Price’s May 2, 2024, Order, which had granted, in part, Judge Flood’s motion to continue. (For a procedural history of the continuances in this matter, *see* the May 2, 2024, Order). At the outset of the hearing, Presiding Officer Price announced that the purpose of the hearing was to obtain an update on Judge Flood’s health issues that led to the prior continuance and to reschedule the fact-finding hearing.

Present at the hearing were Presiding Officer Price, Respondent Judge Flood, Disciplinary Counsel Raegen Rasnic, Commission Case Manager Aimee Baldoz, Commission IT Manager Gareth Cooper, Commission Executive Director J. Reiko Callner, and members of the public. Respondent Judge Flood appeared without legal representation; Judge Flood’s previous counsel, Mr. Steven Fury and Ms. Vonda Sargent, withdrew from her representation as of May 6, 2024.

Prior to substantive discussions, Judge Flood requested that the hearing be closed to the public in order to facilitate disclosures of her sensitive personal medical information.

The Presiding Officer conducted an analysis under *State v. Bone-Club*, 128 Wn.2d 254 (1995). Respondent contended that for the purposes of the hearing, she needed to disclose personal and sensitive medical information. When the public was solicited for objections, a member of the public who identified himself as Robert Davy objected, expressing concern about

1 further continuances and that the community has an interest in resolution of the case. The  
2 Presiding Officer balanced on the record the public's interest in the proceedings with Judge  
3 Flood's interests in her personal and sensitive health information and concluded that a temporary  
4 closure of the proceedings was appropriate for the purposes of discussing the specifics of Judge  
5 Flood's information. The Presiding Officer further concluded that there were no lesser restrictive  
6 alternatives.

7           Thereafter, the recording of the hearing was paused at 4:45 pm, and, with the exception  
8 of Gareth Cooper and members of the public, the participants listed above were placed in a  
9 private Zoom meeting room. The details of Judge Flood's ongoing medical concerns were  
10 discussed during the closure, as well as Judge Flood's on-going performance of her work duties  
11 (characterized as nearly 40 hours per week) and proposals for the administration of the case in  
12 the context of the specific health information.

13           At 5:31 pm, the open hearing resumed with the inclusion of the public and excluded staff.  
14 The Presiding Officer recited, in general terms, what occurred during the closure. The Presiding  
15 Officer explained that Judge Flood described her personal and sensitive health information and  
16 took questions from both the Presiding Officer and Disciplinary Counsel. Judge Flood also  
17 discussed her difficulty in scheduling medical procedures and obtaining records thereto.

18           The Presiding Officer then addressed a request from Judge Flood to seal her April 22,  
19 2024, Declaration previously filed in conjunction with her April 22 motion to continue.  
20 Conducting another analysis under *State v. Bone-Club*, 128 Wn.2d 254, the Presiding Officer  
21 solicited objections from the public. As a member of the public, Mr. Davy again objected and  
22 specifically requested that the document be reviewed for potential redaction, rather than  
23 wholesale sealing, as a potential less restrictive alternative. After reviewing the document, the  
24 Presiding Officer concluded that it was not susceptible to being redacted and further determined  
25 that in balancing the interests of the public and the interests of Judge Flood, the entire April 22,  
26 2024, Declaration would be sealed (although available for appellate review). The Presiding

1 Officer further determined that, unless changed by further order, if any information or hearings  
2 are sealed or closed, the information or hearings shall not be available to the public but will be  
3 available to Disciplinary Counsel and CJC investigative staff, including Michele Slotemaker and  
4 Kurt Twitty, Executive Director J. Reiko Callner, and Commission Case Manager Aimee  
5 Baldoz. All Commission investigative staff shall adhere strictly to their preexisting duty of  
6 confidentiality for all information that was sealed or closed.

7 The Presiding Officer then addressed the rescheduling of the fact-finding hearing.  
8 Disciplinary Counsel requested that, given the information disclosed by Judge Flood during the  
9 closed hearing, the fact-finding hearing be reset to a date potentially in August 2024.  
10 Disciplinary Counsel stated no objection to the rescheduled fact-finding hearing being conducted  
11 remotely through the use of a Zoom-type platform. Judge Flood requested that no date for the  
12 fact-finding hearing be reset but, instead, that an additional review hearing be scheduled. Judge  
13 Flood also requested that no decision be made on the method of conducting the fact-finding  
14 hearing (remote or in-person) until she had time to potentially secure a new counsel. She stated  
15 she was not prepared to respond to the possibility of a remote hearing without consulting with  
16 prospective new counsel. The Presiding Officer said he would take the matter under advisement.

17 Based on the foregoing, it is hereby **ORDERED** that

18 1. Notwithstanding certain unknown contingencies related to Judge Flood's health  
19 issues, setting a date-certain for the fact-finding hearing in this case is necessary in order to  
20 facilitate resolution of this matter. As for the conduct of the hearing, multiple jurisdictions are  
21 successfully utilizing Zoom-type platforms for many court proceedings, including civil trials and  
22 jury selections, without compromising the fairness of the proceedings. (Judge Flood advised she  
23 is regularly conducting remote hearings in her own court). Because Judge Flood's health issues  
24 previously led to a very late continuance of the previously scheduled March 18, 2024, fact-  
25 finding hearing, which caused significant disruption to facilities-planning, witnesses, CJC staff  
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1 and panel members, the fact-finding hearing in this matter shall be conducted remotely, by Zoom  
2 or an equivalent remote platform.

3 2. The fact-finding hearing will commence on **October 21, 2024, via Zoom**. This  
4 date, while representing further delay, was deliberately selected to accommodate Judge Flood's  
5 potential health issues while balancing the need for resolution for both Judge Flood and her  
6 community with the challenge of securing the available participation of CJC staff, multiple panel  
7 members, and witnesses. (This date will also provide Judge Flood ample opportunity to secure  
8 new counsel if desired. Thus, it is not anticipated that any request for a continuance will be  
9 granted if based on the alleged need for preparation for new counsel who might appear.) As the  
10 Presiding Officer stated in his May 2, 2024, Order, "further extended continuances without proof  
11 of substantive cause are unacceptable."

12 3. Any deadlines from the Presiding Officer's October 18, 2023, Scheduling Order  
13 that have passed will not be reset, including the deadline for pretrial motions. Thus, no further  
14 pretrial motions are permitted (except those related to scheduling or obligations imposed by this  
15 order, including that a new counsel for Judge Flood may bring a motion to reconsider conducting  
16 the fact-finding hearing via Zoom). The following deadlines from the October 18, 2023,  
17 Scheduling Order will be reset as follows:

18 **Joint Statement of Evidence:** By September 23, 2024, the parties shall file a joint  
19 statement of evidence listing witnesses that each party will call and a short  
20 summary of their testimony; a statement of charges in the case; and listing all  
21 exhibits each party expects to offer in evidence. Disciplinary Counsel and  
22 Respondent's Counsel shall determine what, if any stipulations, can be reached on  
23 the admissibility of evidence and undisputed facts. The parties will number all  
24 exhibits consecutively, beginning with stipulated exhibits (i.e. 101, 102, 103),  
25 followed by those offered by Disciplinary Counsel (i.e. 201, 202, 203), followed  
26 by those to be offered by Respondent's Counsel (i.e. 301, 302, 303). The parties

1 shall collaborate to compile and produce a physical notebook of all proposed and  
2 anticipated exhibits with numbering for the use of the Presiding Officer during the  
3 hearing.

4 **Trial briefs:** Any trial briefs shall be filed by October 14, 2024.  
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6 4. Because (1) there is a significant delay of the fact-finding hearing, (2) Judge  
7 Flood has represented without written supporting documentation that many of her health issues  
8 have not resolved to the point of definitive prognosis or known severity, and (3) no additional  
9 review hearings or pretrial motions are anticipated, **Judge Flood shall provide monthly Update**  
10 **Submissions on the progress of her health and work status.** Each Update Submission shall  
11 be in writing and shall include (A) a summary of her health issues, including written  
12 documentation substantiating appointments, tests, procedures, and treatment plans; and (B) an  
13 update on performance of official work duties, including an estimate of hours expended on these  
14 duties. (Respondent is reminded that the Presiding Officer has twice previously ordered a *written*  
15 update of her health issues (March 7, 2024, Order and May 2, 2024, Order). On neither occasion  
16 was the order complied with.) If Judge Flood requests that any part of an Update Submission be  
17 sealed as personal and sensitive health information, she shall clearly specify that portion she  
18 contends should be sealed and design the submission such that sealable information can be  
19 readily isolated from public information. The Presiding Officer will consider the sealing of those  
20 portions of the Update Submissions on the record at the appropriate opportunity. Until such  
21 time, the Update Submissions shall not be publicly available. Notwithstanding the expiration of  
22 the deadline for pretrial motions, Disciplinary Counsel may raise an issue with respect to the  
23 Update Submissions by written motion. **Unless modified by subsequent order, the Update**  
24 **Submissions shall be provided to the Commission and Disciplinary Counsel on the**  
25 **following schedule: June 17, 2024; July 15, 2024; August 12, 2024; and September 9, 2024.**  
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5. A status/readiness hearing shall take place on **September 23, 2024, at 2:00 pm.**  
**On or before September 20, 2024, Judge Flood shall provide a final Update Submission.**

DATED this 17<sup>th</sup> day of May, 2024.

/s/ Erik Price  
Judge Erik Price  
Presiding Officer