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No. 202239-1

**SUPREME COURT OF THE
STATE OF WASHINGTON**

TRACY SHARVON FLOOD,
Municipal Court Judge for the City of Bremerton,
Appellant,
v.
COMMISSION ON JUDICIAL CONDUCT,
Respondent.

APPELLANT'S REPLY BRIEF

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SUPPLEMENTAL FACTS

The following supplemental facts are offered to provide further background regarding the issues of Judge Flood's medical issues and progress reports, as well as the parties' intent when they entered the stipulation regarding the pending Canon 2, Rule 2.5(A) charge:

A. Judge Flood's Medical Issues and Reporting.

On March 5, 2024, both parties notified the Presiding Officer that Judge Flood was experiencing medical issues that could affect the fact-finding hearing, then set for March 18, 2024. *Dkt.* 87. The Presiding Officer held an emergency hearing on March 7, 2024. *Id.* Before the hearing, Judge Flood filed a declaration describing her medical situation. *Dkt.* 86 (sealed).

In her declaration, Judge Flood stated that on February 23, 2023, her dentist found she had very high blood pressure, declined to treat her, and advised her to go to the emergency room. *Id.*, ¶4. Judge Flood stated, "My head was banging, I was dizzy and lights exploding in my eyes." *Id.*, ¶5. She also stated

she had “extreme abdominal pain” and was “terrified.” *Id.* At the emergency room, the attending physician immediately ordered a CT scan of her head, neck, and stomach, and also followed stroke protocol. *Id.*, ¶6-7. Judge Flood and the attending neurologist discussed her history as a cancer survivor, after which he informed her that the CT scan revealed a brain mass. *Id.*, ¶7. The neurologist directed her to “immediately schedule another head and neck MRI.” *Id.*, ¶10. Judge Flood was overwhelmed that she might again have cancer and could hardly bring herself to say the word out loud. *Id.*

Judge Flood declared she had four medical appointments in the following two weeks – March 7, 12, 18, and 19. *Id.*, ¶11, 14. The appointment on March 18 (the first day of the fact-finding hearing) was at Seattle Cancer Care Alliance for a head MRI. *Id.*, ¶14. The appointment on March 19 (the second day of the hearing) was at the Veteran’s Affairs hospital (“VA”) to develop a treatment plan with her neurosurgeon. *Id.*, ¶19. Judge Flood also stated she had a new endocrinologist, and that getting

appointments at the VA was difficult and rescheduling could have dire consequences. *Id.*, ¶15. Judge Flood attached an email from a VA Care Manager corroborating her three VA appointments. *Dkt.* 86.1 (sealed).

At the March 7, 2024 hearing, Judge Flood's original attorneys, Vonda Sargent and Steve Fury, appeared on her behalf and requested a continuance of the fact-finding hearing. *Dkt.* 87. Judge Flood was not present for this hearing and there is no recording or transcript of the hearing in the record. *Id.*

Following the hearing, the Presiding Officer issued a written order finding Judge Flood had shown a "sufficient basis" to continue the hearing, noted her medical issues had "not yet been fully evaluated," and expressed sympathy to her. *Id.* at 2-3. The Presiding Officer elected not to set a new date for the fact-finding hearing as Judge Flood's medical prognosis was uncertain. *Id.* at 3. Instead, it set a review hearing for April 16, 2024, and ordered Judge Flood to file a "status report" 24 hours

prior. *Id.* The only requirement of the status report was that it describe the “progress of [her] medical issues.” *Id.*

At the April 16, 2024 hearing, Judge Flood’s counsel informed the Presiding Officer they were withdrawing from the case. *Dkt.* 90. Judge Flood did not file a status report before the hearing, however her counsel provided a verbal status report at the hearing. *Id.* The Presiding Officer scheduled another review hearing for May 8, 2024, but did not order Judge Flood to file any status report beforehand. *Id.*

On April 23, 2024, Judge Flood moved to continue the May 8 review hearing based on a medical update provided in an accompanying declaration. *Dkt.* 91. In that declaration, Judge Flood provided detailed information about multiple significant health issues. *Dkt.* 91.1 (sealed). She also provided dates for six upcoming medical appointments, including an appointment with her gastrointestinal specialist at the VA, which directly conflicted with the scheduled review hearing. *Id.*, ¶5. Disciplinary Counsel objected to Judge Flood’s motion unless

she supplied “documentation verifying” any conflicting appointments. *Dkt.* 93 at 1.

On May 2, 2024, the Presiding Officer issued an order continuing the review hearing and ordering Judge Flood to “provide a written status report, with documentation, of her health issues” at least 24 hours prior to the hearing. *Dkt.* 94 at 6-7.

The review hearing was held on May 14, 2024, and Judge Flood appeared pro se. *Dkt.* 95 at 1. Judge Flood, having filed a medical status report on April 22, 2024, and without counsel since May 6, 2024, did not file a second medical status report before the hearing. *Id.* However, at the hearing, Judge Flood provided a verbal medical update. *Id.* at 2. The Presiding Officer set the fact-finding hearing for October 21, 2024, and ordered Judge Flood to provide monthly written status reports “on the progress of her health and work status,” including supporting documentation, as well as updates on her performance of official work duties. *Id.* at 5.

On June 18, 2024, Judge Flood filed a declaration stating she had medical appointments on June 20, 21, 27 and 29 but that she generally continued to perform her judicial duties via Zoom and in person. *Dkt. 97*, ¶2-4. Judge Flood attached a letter from a VA nurse practitioner, which stated that Judge Flood:

has multiple upcoming medical appointments, including diagnostic testing, blood work, and in person face to face appointments that will require her to miss work. She currently has two procedures that are in the process of being scheduled that will occur towards the end of July.

Dkt. 97.1. When Disciplinary Counsel later questioned the sufficiency of this status report, Judge Flood filed a supplemental declaration explaining that since the Presiding Officer ordered monthly updates, she had only one medical appointment, which occurred after she filed her June status report, and for which she had since filed chart notes. *Dkt. 103.1*; *Dkt. 101.1* (sealed).

On July 15, 2024, Judge Flood filed a status report, which described and provided proof of an eye appointment on June 20th (as referenced in her supplemental declaration). *Dkt. 101.1*; *Dkt.*

101.2 (sealed). Again, this was her only medical appointment since the May 14, 2024 hearing. *Dkt.* 103.1

On August 12, 2024, Judge Flood filed a status report stating she had attended only one appointment since her last update, on July 29, 2024. *Dkt.* 107.2 (sealed). Judge Flood attached her discharge paperwork for that appointment, which showed she had been sedated via IV for a gastrointestinal endoscopy, had biopsies taken, and that she may need resection surgery. *Id.* Judge Flood also declared that since the July 29 appointment, the VA had scheduled her surgery for August 29, 2024. *Id.*

On September 9, 2024, Judge Flood filed a status report, attaching a letter from her primary care physician, Dr. Sharon Gill, dated August 20, 2024. *Dkt.* 113.1 (sealed); *Dkt.* 113.2 (sealed). In the letter, Dr. Gill stated that in February 2024, just before Judge Flood requested a continuance, she was “seen in our Emergency Department for Hypertensive Urgency and symptoms of a possible stroke or other life-threatening brain

injury.” *Dkt.* 113.2 (sealed). Dr. Gill stated, “She did not have a stroke or other life-threatening *diagnosis* at that time.” *Id.* (emphasis added). Dr. Gill stated Judge Flood now had two diagnoses – brain meningioma and neuroendocrine tumor of the stomach. *Id.* Dr. Gill continued:

These are serious medical issues that require careful monitoring, further refined diagnostic testing, and treatment. To accomplish this, she has had multiple (16) medically- necessary scheduled clinic appointments and diagnostic tests since 2/2024, many of which have been time-sensitive and needed to be done on short notice and with limited scheduling flexibility.

Id.

On September 20, 2024, Judge Flood filed her final status report before the October hearing. *Dkt.* 115.1 (sealed). In it, she stated she had recently had ten tumors removed from her stomach, and that she was also in the process of scheduling a PET/CT scan and further blood tests. *Id.*

Judge Flood did not request any further continuances for her medical issues and the fact-finding hearing commenced as scheduled on October 21, 2024.

B. The Parties' Intent in Entering the Stipulation Regarding the Charge of Violation of Canon 2, Rule 2.5.

On the first day of the fact-finding hearing, the parties presented the CJC panel a Stipulation to Facts and Code Violations ("Stipulation"). *Dkt.* 121. In the Stipulation, Judge Flood agreed to violations of three judicial rules, however the Stipulation did not explicitly address the pending Canon 2, Rule 2.5(A) charge. *Id.* Before the panel reviewed the stipulation, the Presiding Officer asked Disciplinary Counsel to describe the stipulation. Hearing Transcript, Volume I pp. 17-18 (hereafter I, II, III, or IV for transcript volumes).

Disciplinary Counsel represented to the Presiding Officer that the stipulation "contemplates that this proceeding would go to hearing on the issue of sanction..." *Id.* p. 18. After the Presiding Officer requested further explanation, Disciplinary Counsel stated that if the stipulation were approved, the parties would "have two days of testimony pertinent to the issue of sanction." *Id.* at 25 (emphasis added). Counsel for Judge Flood

then confirmed she agreed with these representations of the parties' intent. *Id.* at 26.

Disciplinary Counsel then later sought to persuade the panel to accept the stipulation by stating that the stipulation “allows the panel to get right to what is most important here, which is what should happen as a result of this course of conduct,” and that “moving straight to [the sanction] determination” would be in the interest of the CJC and public. *Id.* at 41-42. However, when the Presiding Officer asked what the parties' intended for the Rule 2.5(A) violation, Disciplinary Counsel stated she believed that charge would still be on the table at the hearing. *Id.* at 42-43.

When questioned further, Disciplinary Counsel again stated the parties' intended to proceed to hearing on sanction only and that she would not be arguing there was a Rule 2.5(A) violation. *Id.* at 48. But Disciplinary Counsel then said that if there was evidence of violation “in the sanction phase,” she “would reserve the right to argue that.” *Id.*

Judge Flood’s counsel responded that she disagreed with Disciplinary Counsel, that the parties intended the stipulation to narrow the charges, and that if Disciplinary Counsel argued for a Rule 2.5(A) violation it would be a violation of the stipulation. *Id.* at 56. The Presiding Officer did not decide the issue prior to the fact-finding hearing, stating, “Well, we’ll deal with that if and when it comes up.” *Id.* at 57. Judge Flood’s counsel did not litigate the Rule 2.5(A) charge and did not mention it in opening or closing argument.

ARGUMENT

A. Judge Flood did not fabricate her medical crisis nor fail to cooperate with orders to provide ongoing reports of her medical status.

In its Response Brief, the CJC resumes its callous attack on Judge Flood’s medical crisis and medical status reports. The CJC continues to argue Judge Flood’s medical issues were fabricated or exaggerated, that she did not really need a continuance, and that she repeatedly and intentionally failed to

comply with the Presiding Officer's orders for medical progress reports. None of this is true.

The record clearly verifies Judge Flood's representations that she had experienced a frightening medical emergency and that was scheduled for multiple necessary medical appointments, including ones on the first and second day of the fact-finding hearing to evaluate a recently discovered brain mass. Even if Judge Flood's issues were ultimately found not to be serious, her request for a continuance was plainly appropriate. But her conditions *were* serious; she was later diagnosed with brain and stomach tumors (and, eventually, stomach cancer).

Despite this evidence, the CJC repeatedly accused Judge Flood of fabricating her medical crisis to obtain a continuance. For example, the CJC found that by not voluntarily signing a VA medical authorization to fully release her 2024 medical records to Disciplinary Counsel, Judge Flood "raise[d] serious questions about the credibility of her representations that her medical situation kept her from participating in the Commission's

scheduled proceeding.” Commission Decision and Order (“Order”), 5. The CJC then went farther, referring almost mockingly to Judge Flood’s medical situation and the inconvenience it caused:

These mostly unsubstantiated but extremely dire claims required twice resetting the time for hearing from its second set date of March 18, 2024, to the week of October 21, 2024.

Order, 4-5. Even setting aside the false claim that Judge Flood’s medical situation required resetting the hearing *twice*,¹ the CJC’s trivialization of Judge Flood’s brain and stomach tumors is unconscionable.

In a declaration that accompanied her Opening Brief, Judge Flood disclosed that after she had 10 stomach tumors removed just before the fact-finding hearing, her severe stomach symptoms remained unresolved. *Declaration of Tracy Flood*, ¶1. She stated that in January 2025, her doctors confirmed she had stomach cancer, which was later diagnosed as MALT

¹ The hearing was only reset once based on Judge Flood’s medical situation – from March 18, 2024 to October 21, 2024.

lymphoma, a rare, slow-growing type of non-Hodgkin lymphoma. *Id.*, ¶ 2-4.

While the CJC was unaware Judge Flood was suffering from cancer when it issued its Order, it was certainly aware when it filed its Response Brief. Somehow, this did not deter the CJC from continuing to suggest Judge Flood’s medical crisis was a ploy to get a continuance. *See, e.g.*, Response Brief, 45 (Judge Flood “contended she had dire medical conditions that made participation [in the fact-finding hearing] impossible.”); *Id.* (“Although Judge Flood continued to perform her judicial duties, she repeatedly claimed a need to delay the disciplinary proceedings.”).

It bears repeating that Judge Flood was not present for the March 7, 2024 hearing at which her attorneys moved for a continuance. The only information she personally presented was in her declaration, wherein she is clear that her request for a continuance is based on urgent and conflicting medical appointments. *Dkt.* 86 (sealed). Judge Flood did not claim, as the

CJC suggests, that she was physically unable to participate. That Judge Flood continued to perform judicial duties in no way conflicts with the reasons she moved for a continuance.

The CJC also continues to wrongly claim Judge Flood failed to cooperate with the Presiding Officer's orders to provide medical progress reports. It is true Judge Flood did not file a medical progress report before the initial review hearing on April 16, 2024, and that she did not file one immediately before the following review hearing on May 13, 2024. However, Judge Flood *did* file a progress report on April 23, between the two hearings, and she also provided verbal medical progress reports at both hearings. There is no evidence that the form of these reports impacted the case in any way.

Further, Judge Flood faced extenuating circumstances at both hearings – at the April 16 hearing, her counsel was in the process of withdrawing from her case, and at the May 13 hearing, Judge Flood had been unrepresented for a full week. After Judge

Flood retained new counsel, she unwaveringly filed written monthly status reports.

The CJC also argues, in both its Order and Response Brief, that the progress reports Judge Flood filed contained “little or no information,” and that she failed to submit supporting documentation ordered by the Presiding Officer. *See, e.g.*, Order, 5; Response Brief, 45. These claims mostly stem from a subtle but important mischaracterization of the Presiding Officer’s orders.

Contrary to the CJC’s assertions, the Presiding Officer never ordered Judge Flood to “submit supporting documentation” for her initial emergency room visit. Instead, all the Presiding Officer’s orders for documentation pertained to the “progress” of her medical issues. Judge Flood reasonably understood this to require her to report any relevant medical developments, which she consistently did. This apparently caused confusion when, for several months, she had few appointments and little progress to report. However, once her

brain and stomach tumors were diagnosed, Judge Flood obtained a letter from her doctor and presented it to the Presiding Officer.

Even if this Court found the form of some of the progress reports not fully compliant, there is no evidence this was intentional or obstructive. Judge Flood was dealing with potentially life-threatening health issues while facing a highly publicized CJC proceeding and fulfilling her considerable duties as the sole judge at Bremerton Municipal Court. A modicum of understanding and grace is in order under these circumstances, particularly where Judge Flood's medical issue ultimately did not result in further delay, the entire goal of the reports.

Judge Flood respectfully submits that that her medical issues and need for continuance of the fact-finding hearing were not fabricated or exaggerated, that she substantially complied with orders for medical progress reports, and that her cooperation throughout the CJC process is a mitigating factor in determining discipline.

B. Judge Flood was denied her constitutional right to a hearing before the full CJC.

The CJC fails to respond to Judge Flood’s primary argument why its quorum action violated her constitutional rights – that Article IV, Section II explicitly authorizes this Court to act in a quorum, whereas Article IV, Section 31 does not so allow the CJC. And that, therefore, under the well-established interpretive rule that where there is a difference in language used there is a difference in intent,² this Court should find the drafters did not intend to allow the CJC to act in quorum.

The CJC makes three arguments in response, none of which are persuasive. First, it argues Judge Flood is foreclosed from challenging the constitutionality of its quorum action under the law of the case doctrine. According to the CJC, this Court “considered and rejected” the argument when it denied Judge Flood’s writ of prohibition. Response Brief, 60. However, in the

² See, e.g., *Brin v. Stutzman*, 89 Wn. App. 809, 832, 951 P.2d 291 (1998); *State ex rel. O’Connell v. Port of Seattle*, 65 Wn.2d 801, 806, 399 P.2d 623 (1965).

order in question, a commissioner of this Court dismissed Judge Flood's writ of prohibition in part because she had a plain, speedy, and adequate remedy at law – direct review by this Court. *Ruling Dismissing Original Action Against State Officer*, No. 11005, 8-9. In fact, the commissioner held that direct review by this Court is the “only appropriate forum for adjudicating” her constitutional challenge. *Id.* at 9. Even if the commissioner had dismissed Judge Flood's writ on the merits, the CJC cites no authority that a commissioner, whose authority is delegated by this Court, can render a decision that becomes “the law of the case” foreclosing this Court from later consideration.

Second, the CJC argues that Judge Flood's constitutional challenge should be denied because a quorum is authorized by its own rules. However, of course, court rules cannot circumvent or supersede our constitution. *State v. Waldon*, 148 Wn. App. 952, 962, 202 P.3d 325 (2009). The CJC's quorum rule, CJCRP 3(c), is therefore unconstitutional and its quorum action against Judge Flood invalid.

Third, the CJC court invokes “common law” to justify acting by quorum but relies on two non-jurisdictional cases that are readily distinguishable. In *F.T.C. v. Flotill Prods., Inc.*, 389 U.S. 179, 183, 88 S.Ct. 401 (1967), the Court did not consider or address any constitutional challenge to quorum action; instead, it applied a federal common law rule that where a decisional body’s enabling statute is silent, a quorum is empowered to act for the body. Because the CJC is neither legislatively created nor a federal body, the common law in *Flotill* is inapplicable.

Notably, the *Flotill* Court recognized the interpretive principle that if “Congress wanted to authorize the exercise of the powers of an administrative body by less than the full body in other situations, it did not lack the words to do so expressly.” *Id.* at 186. However, the Court ultimately found this principle inapplicable under the facts because Congress had, in various statutes, both expressly authorized *and* expressly prohibited quorum actions. *Id.* The Court held, “This diversity in congressional treatment of the problem clearly forecloses

reliance upon a particular choice in one statute as the basis for an inference of a contrary choice in another which says nothing on the matter.” *Id.* Here, there is no diversity in treatment – our constitution only expressly *grants* quorum power; nowhere does it expressly prohibit it.

Vermont case *State v. Mills*, 167 Vt. 365, 706 A.2d 953 (1998) is also not on point. There, the appellant argued the Vermont Supreme Court could not act as a quorum because the Vermont constitution did not state that it could. *Id.* at 366-67. The court rejected this argument, primarily because both Vermont statute and common law dictated that “[i]n the absence of a governing provision, [] a majority of a judicial body is a quorum.” *Id.* at 367. The CJC cites no analogous statute or common law in Washington.

Additionally, the court found that prohibiting quorum action “would impose a constitutional strait-jacket over the decisional processes” of the state’s highest court. *Id.* at 386. There is no comparable public policy concern here. While the

CJC baldly asserts that requiring the full commission to decide cases would “make operation of the Commission virtually impossible as a practical matter,” it provides no explanation why this would be. Response Brief, 65. Based on information published on the CJC’s public website, it has conducted just four fact-finding hearings since January 1, 2020, at least the last two of which have been via Zoom.³ Further, at the time of this filing, the CJC has no pending charged cases.⁴ It is not “impossible” or even impractical for the 11-member CJC to coordinate a single Zoom fact-finding hearing once every 12 to 18 months. Our superior courts regularly manage to summon multiple 12-member jury panels to appear for in-person trials, which are often much longer than CJC fact-finding hearings.

³ Wash. State Comm’n on Judicial Conduct, *Public Actions*, https://www.cjc.state.wa.us/index.php?page=activity§ion=public_actions (last visited Sept. 21, 2025)

⁴ Wash. State Comm’n on Judicial Conduct, *Open Cases*, https://www.cjc.state.wa.us/index.php?page=activity§ion=open_cases (last visited Sept. 21, 2025).

Finally, the *Mills* court did not consider the argument made here – that because the constitution’s drafters expressly granted one decisional body the authority to act in quorum but not another, principles of interpretation dictate the drafters did not intend the second to have quorum authority.

For this reason, the lack of Washington common law or statute dictating presumptive quorum power, the lack of public policy justification for a CJC quorum, and because our constitution dictates judicial conduct cases be decided by a diverse mix of commissioners (a judge each from the court of appeals, superior courts, and courts of limited jurisdiction, two active lawyers, and six non-lawyers appointed by the governor), it is apparent that our constitution’s drafters did not intend for the CJC to act by quorum.

C. The CJC ignores key language in the stipulation demonstrating the parties’ intent to dismiss the Canon 2, Rule 2.5(A) violation.

In arguing this Court should uphold its finding of a Canon 2, Rule 2.5(A) violation, the CJC fails to address the crucial

language in the parties' stipulation which makes clear the parties intended its dismissal:

[The parties] stipulate and agree to the following facts and Code of Judicial Conduct Violations and *agree to proceed to a hearing as to the appropriate sanction.*

...

The parties agree that the *case* will proceed to hearing *on the issue of sanction*.... [T]his Stipulation and Agreement shall not limit either party's ability to present evidence *pertinent to the Deming factors and CJCRP 6(c)(1)(A)-(H).*

Dkt. 121 at 10 (emphasis added). This language is wholly inconsistent with an intent to continue to litigate a Rule 2.5(A) violation.

Further, Disciplinary Counsel repeatedly represented to the Presiding Officer that if the stipulation were approved, the intent was to proceed straight to hearing on sanction. *See, e.g.,* I p. 18; 25; 41-42. While Disciplinary Counsel later told the Presiding Officer she believed the Rule 2.5(A) violation was still on the table, she stood by her statements that the case would go to hearing on sanction only. *Id.* at 48. These two positions cannot be reconciled.

If, as Disciplinary Counsel stated, the case was to proceed “straight to” hearing on sanction (the entire purpose of the stipulation), then the Rule 2.5(A) charge was not live. On the other hand, if the Rule 2.5(A) charge were live, the parties would not be proceeding to hearing on sanction only. Because both parties agreed the case was to proceed straight to hearing on sanction, and because the Presiding Officer did not rule otherwise, Judge Flood did not litigate or address the issue at trial. It is manifestly unjust to conduct a truncated, sanction-only hearing and then find Judge Flood in violation of Rule 2.5(A).

The CJC points out the stipulation was not a Rule 23 stipulation – a stipulation to violation in exchange for an agreed sanction. Response Brief, 21. This, it argues, is evidence the parties did not intend dismissal of the Rule 2.5(A) charge. *Id.* But the CJC does not explain its logic. Rule 23 does not prohibit Disciplinary Counsel from dismissing charges as part of a stipulation.

Under the plain language of the stipulation, Disciplinary Counsel's repeated agreement that the hearing would be on sanction only, and the injustice of finding a rule violation following a truncated sanction hearing, this Court should reverse the CJC's finding of a Rule 2.5(A) violation.

D. The CJC continues to falsely claim Judge Flood caused the turnover of nearly two entire sets of staff - 13 employees.

In its Response Brief, the CJC doubles down on its sensational and wholly unsupported claim that Judge Flood “caused the complete turnover of two entire sets of court staff (but for one individual seeking alternative employment at the time of the hearing).” When Judge Flood took the bench, the court had seven staff members, all of whom eventually left. *Dkt.* 282, ¶. 3, Ex. A. Of those seven staff members, there was only evidence that **two** left because of Judge Flood. Of the other twenty-one employees hired by Judge Flood, twelve had left the court at the time of the hearing. Of those, there was only evidence that **three** had left, in whole or in part, because of Judge Flood.

Accordingly, the departure of only five, not thirteen, employees can be attributed to Judge Flood. The CJC's decision to continue pushing such an obviously baseless claim on appeal indicates a lack of objectivity.

E. The CJC compounded its error in overstating Judge Flood's role in staff departures by wrongly blaming Judge Flood for all the court's operational issues.

The Court's erroneous finding that Judge Flood caused the turnover of two entire sets of staff was highly consequential to its ultimate recommendation of removal. Indeed, it was expressly the "catastrophic loss of expertise and experience" from that "turnover" that the CJC found caused widespread court operational issues. Order, 8. This was so even though Disciplinary Counsel was unable to produce any evidence that Judge Flood had personally made any of errors.

For example, the CJC blamed Judge Flood that:

[o]n multiple occasions, the safe at the court was left open with funds inside, and there was no clerk present who knew how to close the accounts out for the day. Receipting for funds received was far overdue.

Order, 8. This refers to Jennefer Johnson's testimony that, in September 2022, her first day at Bremerton Municipal Court ("BMC") as part of Courts Helping Courts, she saw a safe open with money inside and that some accounting had not been done. II pp. 102; 107-108; 112. At the time, three staff members, who Judge Flood had inherited, had left the court. *Dkt.* 282, ¶3, Ex. A. For two of those employees, there was no evidence that their departure was related to Judge Flood. For the third employee, Dawn Williams, there was no evidence she was responsible for handling money, locking the safe, or doing accounting.

The CJC also stated, "People posting bond would not be reimbursed those funds even after the defendants' obligations to appear had been satisfied." Oder, 8. This refers to Prosecutor Gary Hersey's testimony about a single case, which he did not identify, where Judge Flood properly exonerated a defendant's bond, but for unknown reasons the bond had not actually been returned to him. II pp. 291-92. Mr. Hersey did not testify why he

believed this happened, that it was a reoccurring issue, nor that he felt Judge Flood was at fault. Further, Mr. Hersey stated the error occurred around May 2024, nearly a full year after the departure of the last of the five employees who testified they left because of Judge Flood (Jennefer Johnson, who left June 9, 2023). *Dkt.* 282, ¶3, Ex. A.

The CJC also blamed Judge Flood for unknown court staff errors made in three BMC cases that had unfortunate impacts:

- In December 2023, Judge Flood signed a competency restoration order for in-custody defendant Henri Daniel, but a few weeks later, Mr. Hersey discovered the order had not been sent to Western State Hospital. II pp. 308. This meant Mr. Daniel had been waiting in jail without progress toward a bed date. *Id.* at 308-09. But there was no evidence which staff member was responsible for sending orders to Western State, how or why this happened, or that BMC had any relevant staffing issues at the time.
- In February 2024, Judge Flood issued a warrant for the arrest of defendant Nathaniel Braden, but for unknown reasons, it did not make it into the digital court file and was not sent to police.⁵ II p. 315; 340-

⁵ Mr. Braden tragically died of a drug overdose while out of custody. *Dkt.* 257. The CJC insinuates Judge Flood caused his death. Order, 8 (“Defendant Nicholas Braden’s life may have been saved by being taken

42; *Dkt.* 257. Again, there was no evidence who was responsible for these tasks, how or why this happened, or that BMC had any relevant staffing issues at the time.

- In August 2024, Judge Flood quashed a warrant for the arrest of defendant Albert Glover, but the quash order was never sent to police. Mr. Glover was later arrested on the warrant, and police accidentally damaged his car tires in the process. II pp. 313-14. Again, there was no evidence which staff member was responsible for getting warrants to police, how or why this happened, or that BMC had any relevant staffing issues at the time.

The CJC’s conclusion – that Judge Flood caused all the court’s operational problems – crumbles with its erroneous finding that she forced out two consecutive full sets of staff. Of the five employees whose departure could be attributable to Judge Flood, one was a probation officer (Ian Coen), and another was a Therapeutic Court Coordinator (Steven DesRosier). There was no evidence that either individual was responsible for the administrative tasks for which there was evidence of error.

into custody on a warrant that languished without processing for months. Instead, he was released from a hold in another jurisdiction, as the Bremerton warrant was not in the system, and he died of an overdose within days of his release.”).

The three remaining staff members in question were Court Administrator Dawn Williams (who left July 21, 2022), Senior Legal Tech Serena Daigle (who left May 15, 2023), and Court Administrator Jennefer Johnson (who left June 9, 2023). *Dkt.* 282, ¶3, Ex. A. The CJC did no individualized analysis of how these three staff departures or the timing of their replacement were related to the court errors presented by the CJC. And because there was no evidence that Judge Flood personally committed any of the errors, Disciplinary Counsel failed to prove by clear, cogent, and convincing evidence that Judge Flood caused any court operational issue.

F. The CJC continues to be dismissive of the substantial evidence of – and Disciplinary Counsel’s stipulation to – racial bias against Judge Flood.

Despite substantial evidence supporting Judge Flood’s allegations of racial bias, the CJC waves them away with a token acknowledgement of historic racism and the familiar refrain of “not sufficient evidence to substantiate” here. Given that Judge

Flood testified to significant implicit and structural racial bias, that this was corroborated by two BMC staff members and an expert witness, and that Disciplinary Counsel **stipulated** to it, it is unclear how, exactly, Judge Flood might have satisfied the CJC of racial bias.

Judge Flood never alleged explicit racism, nor any form of racism that lent itself to hard proof. As Sarah Dryfoos, an expert in workplace culture specializing in racial bias,⁶ testified:

Over the course of the last 60 years, we have witnessed a veiling of explicit racist behavior as society has largely moved towards disavowing racism. However, this has not meant that racism has disappeared, instead, it means that the ways we see and experience racism have become more subtle, discreet and systematic.

Dkt. 347, ¶9. Sarah Dryfoos then named and described common forms of racism in the modern workplace: microaggressions,

⁶ The CJC subtly minimized the credentials and experience of Sarah Dryfoos, a pattern with witnesses called by Judge Flood. While the CJC acknowledged Sarah Dryfoos co-founded and worked for workplace consulting company Revolution Lab, it omitted entirely that Sarah Dryfoos and Revolution Lab specialize in handling race-related workplace issues, including “helping organizations become anti-racist in both culture and structure” and “working with organizations across fields where race and racism are impacting interpersonal dynamics.” Order, 20; *Dkt.* 347, ¶ 1-2.

gaslighting, implicit bias, and tone policing, and that there was a reasonable expectation Judge Flood would be subject to these forms of racism because she was a black woman assuming a position of power and authority traditionally occupied by white males. *Id.*, ¶10-13. Sarah Dryfoos further explained that, because of implicit biases, behaviors seen as aggressive or rude from Judge Flood would be experienced as assertive or appropriate from a white male. *Id.*, ¶13. This is exactly what Judge Flood argued had happened. *See* IV pp. 700:2-703:23; 724:24-727:25; 729:17-730:11; 737:8-738:11; 761:21-762:4; 762:20-763:17.

While Judge Flood produced no physical proof of racism, there was substantial testimony corroborating her allegations. *See, e.g.*, III pp. 604:13-21 (Faymous Tyra: “I saw lawyers talk to [Judge Flood] in a way that I’ve never seen lawyers talk to a judge in my [] 30 years.... [the court staff] celebrated every time somebody talked her down or mistreated her.”); *Id.*, pp. 604:24-605:2 (Mr. Tyra: “There was an anti-Judge Flood movement [] and [] an anti-minority movement.”); *Id.*, pp. 607:17-611:14 (Mr.

Tyra describing discrimination, bullying, and ostracism of Judge Flood and other minorities, which led to one minority employee's resignation); *Id.*, pp. 611:15-612:14 (Mr. Tyra testifying to nonminority staff consistently bad-mouthing Judge Flood during the lunch hour); *Id.*, pp. 612:10-613:25; 615:12-25; 618:7-621:10 (Mr. Tyra again describing lawyers disrespecting Judge Flood, and staff celebrating it – “I have never seen this type of behavior towards a judge [other than Judge Flood] in my whole career.”); *Id.*, pp. 401:1-405:4 (Keyera Gaulden testifying to other staff gossiping about Judge Flood, speaking to her rudely, giving push back, and resisting their duties).

Though the CJC acknowledged Mr. Tyra and Ms. Gaulden were credible, it did not “give much weight to their testimony” because, according to the CJC, they had “limited background or knowledge in the practical operation of a court and were not required to perform in ways that affected the daily workings of the regular court.” Order, 19. This is simply untrue. Even if it

were, the CJC does not explain how this would prevent them from observing racial bias.

The court's mishandling of the racial bias evidence is exemplified in its evaluation of a staff member persistently calling Judge Flood "Tracy," despite repeatedly being asked to call her "Judge." *Dkt.* 121, p. 3. The CJC dismissed this vivid example of a microaggression as "undoubtedly annoying" and "*quite possibly* disrespectful." Order, 25 (emphasis added). The CJC then decided, without any evidence, that it was likely a gender issue, not a race issue. *Id.* ("[Being called by first name] is not an uncommon experience for women judges and other professional women.").

The CJC also ignored Disciplinary Counsel's *stipulation* that Judge Flood was forced to deal with multiple forms of racial bias from her own staff:

Respondent has faced numerous hurdles in her tenure as Bremerton Municipal Court's Presiding Judge, including being the first female and first Black judge in the Court's history; taking over for a white male judge who had just retired after 24 years in the position; inheriting the departing judge's full staff, most of whom were long-term employees who had become accustomed to the prior judge's approach which was different from Respondent's; handling racial bias from her own staff including microaggressions, implicit bias, and tone policing...

Dkt. 121, p. 9. The CJC inappropriately overruled the parties' stipulation to the role of racial bias, despite substantial evidence at trial.

G. There is no evidence Judge Flood is uncoachable.

The CJC's primary justification for exceeding Disciplinary Counsel's recommendation of a suspension was that Judge Flood is uncoachable (a concept itself with a highly racialized history) and, incredibly, that she does not have "**the capacity**" to change. Order, 32 (emphasis added). In her Opening Brief, Judge Flood pointed out there is absolutely no evidence to support these offensive claims. Plaintiff counters by pointing to (1) Judge Flood's testimony that she had "worked with" a woman

named Talisa Lavarry to do some unspecified “work with me and the court,” and (2) that she had worked with Courts Helping Courts’ LaTricia Kinlow and Jennefer Johnson, who spent a few months sporadically assisting BMC with administrative staffing issues. Response Brief, 33-34.

None of this evidence supports the CJC’s finding that “personal coaching” had been tried and failed, or that Judge Flood was uncoachable or does not have “the capacity” to learn and grow. Order, 31. Because the CJC’s primary justification why Judge Flood is undeserving of a “second chance” is utterly baseless, this Court should reject its recommendation of removal.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in her Opening Brief, Judge Flood respectfully requests that this Court reject the CJC’s recommendation of removal, and impose discipline of credit for the already extended time she has served on suspension.

**I certify this brief contains 6,613 words, in compliance with RAP 18.17(b).

RESPECTFULLY SUBMITTED this 22nd day of September 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on September 22nd, 2025, I electronically filed the foregoing APPELLANT’S REPLY BRIEF with the Clerk of the Court for the Supreme Court of the State of Washington by using the appellate CM/ECF System.

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Dated this 22nd day of September 2025, at Edmonds, Washington.

/s/ Bonnie O’Laughlin
Bonnie O’Laughlin
Paralegal

BERESFORD BOOTH PLLC

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