

FILED
SUPREME COURT
STATE OF WASHINGTON
8/22/2025 4:34 PM
BY SARAH R. PENDLETON
CLERK

NO. 202239-1

**SUPREME COURT OF THE
STATE OF WASHINGTON**

IN RE: THE HONORABLE TRACY S. FLOOD,
MUNICIPAL COURT JUDGE FOR
THE CITY OF BREMERTON

**RESPONSE BRIEF OF THE COMMISSION ON
JUDICIAL CONDUCT**

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF THE ISSUE	3
III.	STATEMENT OF THE CASE	3
	A. The Commission on Judicial Conduct’s Structure and Procedure	3
	B. The Commission Received Complaints About Judge Flood Beginning Almost Immediately After She Took the Bench, and Initiated Disciplinary Proceedings	6
	C. The Fact-Finding Proceedings	11
	1. Judge Flood moved to dismiss the charges, disqualify disciplinary counsel, and require the entire Commission’s presence at the fact- finding hearing	11
	2. The fact-finding hearing was postponed when Judge Flood asserted that serious health problems would prevent her participation.....	13
	3. The fact-finding hearing commenced after the parties stipulated that Judge Flood violated four Code provisions	14
	D. The Commission’s Decision and Order Censured Judge Flood and Recommended Removal from Office.....	15
IV.	ARGUMENT.....	18

A. Standard of Review.....	18
B. Clear, Cogent, and Convincing Evidence Supports the Commission’s Findings of Misconduct	19
1. The Commission properly considered the Rule 2.5(A) charge	20
2. The Commission’s conclusion that Judge Flood violated Rule 2.5(A) is amply supported by the record.....	24
3. The Commission’s decision does not rely on unsupported findings of fact	30
4. The Commission correctly found insufficient evidence to substantiate Judge Flood’s claim that the accusations against her were the product of racism	35
C. The Court Should Adopt the Commission’s Recommended Sanction of Removal	38
1. The Sanction Recommended by the Commission is Warranted by the Facts	38
2. The Discipline Recommended in this Case is Consistent With That Imposed in Other Cases	47
D. The Commission May Conduct Fact-Finding Hearings and Issue Decisions By Quorum	59
V. CONCLUSION.....	66

TABLE OF AUTHORITIES

Cases

<i>Dodds v. Commission on Judicial Performance</i> , 12 Cal.4th 163, 906 P.2d 1260 (1995)	57, 59
<i>F.T.C. v. Flotill Prods., Inc.</i> , 389 U.S. 179 (1967)	64
<i>In re Bridge</i> , CJC No. 4050-F-106 (2003)	50
<i>In re Brown</i> , CJC No. 11478-F-212 (2024)	52
<i>In re Complaint Against Lindner</i> , 271 Neb. 323, 710 N.W.2d 866 (2006)	56-57
<i>In re Disciplinary Proc. Against Anderson</i> , 138 Wn.2d 830, 981 P.2d 426 (1999)	18
<i>In re Disciplinary Proc. Against Turco</i> , 137 Wn.2d 227, 970 P.2d 731 (1999)	19
<i>In re Disciplinary Proceeding Against Eiler</i> , 169 Wn.2d 340, 236 P.3d 873 (2010)	48
<i>In re Felsted</i> , CJC No. 913-F-19 (1990)	49
<i>In re Furman</i> , CJC No. 3245-F-84 (2000)	50
<i>In re Gallina</i> , CJC No. 9422-F-200 (2022)	53

<i>In re Horan</i> , 85 N.J. 535, 428 A.2d 911 (1981).....	55
<i>In re Judicial Disciplinary Proceedings Against Michelson</i> , 225 Wis.2d 221, 591 N.W.2d 843 (1999)	56
<i>In re Mahoney</i> , CJC No. 10807-F-202 (2022)	54
<i>In re Tanner</i> , CJC Nos. 8889-F-180 (2023).....	51
<i>In re Tanner</i> , CJC No. 11211-F-207 (2023)	51
<i>In the Matter of Keenan</i> , 199 Wn.2d 87, 502 P.3d 1270 (2022)	18-19
<i>Matter of Deming</i> , 108 Wn.2d 82, 736 P.2d 639 (1987)	38-40, 42
<i>State v. Johnson</i> , 188 Wn.2d 742, 399 P.3d 507 (2017)	61
<i>State v. Mills</i> , 167 Vt. 365, 706 A.2d 953 (1998)	64

Constitutional Provisions

Wash. Const. art IV, § 31	3, 38
Wash. Const. art. IV, § 31(1)	4, 62
Wash. Const. art. IV, § 31 (1)-(4)	61
Wash. Const. art. IV, § 31(2)	4-5

Wash. Const. art. IV, § 31(3)	5, 11
Wash. Const. art. IV, § 31(4)	6
Wash. Const art. IV, § 31(6)	6
Wash. Const. art. IV, § 31(8)	17
Wash. Const. art. IV, § 31(10)	62

Statutes

Chapter 2.64 RCW	62
RCW 2.64.020	4, 12
RCW 2.64.111	11
RCW 2.64.120	3
RCW 4.04.010	65

Rules

CJCRP 3(c)	12, 63, 65
CJCRP 3(f)	63
CJCRP 6(c)	39
CJCRP 6(c)(1)	40-41
CJCRP 6(c)(1)(A)	40
CJCRP 6(c)(1)(B)	40
CJCRP 6(c)(1)(C)	41

CJCRP 6(c)(1)(D)	41
CJCRP 6(c)(1)(E)	41
CJCRP 6(c)(1)(F).....	40
CJCRP 6(c)(1)(G)	41
CJCRP 6(c)(1)(H)	42
CJCRP 6(c)(2)	42
CJCRP 6(c)(2)(A)	42
CJCRP 6(c)(2)(B)	43
CJCRP 6(c)(2)(C)	43
CJCRP 6(c)(2)(D)	43
CJCRP 6(c)(2)(E)	43
CJCRP 6(d).....	39
CJCRP 11(b)(1)	5
CJCRP 11(b)(2)	5
CJCRP 17(a).....	4
CJCRP 17(c)(1)	4
CJCRP 17(c)(3)	4
CJCRP 17(d)(1)	5
CJCRP 17(d)(3)	5

CJCRP 17(d)(4)	5
CJCRP 19(b).....	24
CJCRP 20(a).....	10
CJCRP 23	21
CJCRP 23(a).....	21
CJCRP 23(b).....	21
CJCRP 24(b)(9)	63
Code of Judicial Conduct Canon 1	1, 9-10, 14, 19, 38
Code of Judicial Conduct Canon 2	2, 9-10, 14, 19, 38
Code of Judicial Conduct Rule 1.1	1, 9-10, 14, 19, 38
Code of Judicial Conduct Rule 1.2.....	1, 9-10, 14, 19, 38
Code of Judicial Conduct Rule 2.5(A)	2, 9-10, 15, 19-24, 38
Code of Judicial Conduct 2.8(B).....	2, 9-10, 14, 19, 38
Code of Judicial Conduct Scope (1).....	6
Code of Judicial Conduct Scope (2).....	6

Other Authorities

Op. Att’y Gen. 4 (1999)	65
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I. INTRODUCTION

Over a multi-year process, the Commission on Judicial Conduct provided Bremerton Municipal Court Judge Tracy Flood every opportunity to explain herself after receiving multiple complaints about her conduct. Judge Flood's actions led to the turnover of nearly two entire slates of court staff, all of whom cited Judge Flood's mistreatment as the sole or a contributing factor in their decisions to leave. The exodus of competent staff left the court in crisis and unable to fulfill its basic duties to litigants and the public. The Commission found these harms, both to court staff and to the court's operation, to be among the most serious in the Commission's history.

On the first day of the Commission's fact-finding hearing, Judge Flood stipulated to violating three sections of the Code of Judicial Conduct: Canon 1, Rules 1.1 and 1.2, which require complying with the law, promoting public confidence in the judiciary, and avoiding impropriety, and Canon 2, Rule 2.8(b), which requires judges to be patient, dignified and courteous.

At the hearing and via declarations, current and former staff members testified as witnesses for the Commission about their negative experiences with Judge Flood. Three experienced court administrators testified that despite giving months-long training, guidance, and support to Judge Flood, Judge Flood rejected their efforts and was unable or unwilling to change.

Following the fact-finding hearing, the Commission, in a unanimous decision, found that in addition to the stipulated violations, Judge Flood violated Canon 2, Rule 2.5(A), which requires judges to perform their judicial and administrative duties competently and diligently, a violation about which the parties' Stipulation was silent. After analyzing aggravating and mitigating factors, including Judge Flood's repeated failures to cooperate with the proceeding, respond to remedial measures, and take responsibility for the effects of her conduct, the Commission censured Judge Flood and recommended that this Court remove her from office. This Court should follow this recommendation, which is based on ample clear, cogent, and

convincing evidence in the record and acknowledges the paramount importance of preserving public trust in the integrity and competence of the judiciary.

II. STATEMENT OF THE ISSUE

Whether the Commission on Judicial Conduct's decision to censure Judge Flood and recommend her removal from office was based on clear, cogent, and convincing evidence?

III. STATEMENT OF THE CASE

A. The Commission on Judicial Conduct's Structure and Procedure

The Commission on Judicial Conduct is an independent agency of the judicial branch, constitutionally charged with investigating and acting upon complaints of judicial misconduct. Wash. Const. art IV, § 31; RCW 2.64.120. The Commission has 11 members: three judges (a court of appeals judge, a superior court judge, and a court of limited jurisdiction judge, each selected by their respective court), two attorneys selected by the Washington State Bar Association, and six non-attorneys

appointed by the Governor. Wash. Const. art. IV, § 31(1); RCW 2.64.020.

When the Commission receives a complaint about a judge's conduct, an investigative officer conducts a preliminary investigation and makes a recommendation to the Commission on whether to proceed. CJCRP 17(a), (c)(1). The Commission may then dismiss the complaint, continue the investigation, or commence initial proceedings. CJCRP 17(c)(1). The purpose of initial proceedings is to “determin[e] whether probable cause exists for conducting a public hearing or hearings to deal with the complaint.” Wash. Const. art. IV, § 31(2).

If the Commission votes to initiate proceedings, it files a statement of allegations setting forth the nature of the complaint with enough specificity to permit a response from the judge. CJCRP 17(c)(3). The Commission provides the judge with a copy of the statement of allegations and a reasonable opportunity to respond. CJCRP 17(d)(1). After considering the response, the Commission may decide to dismiss the matter. CJCRP 17(d)(4).

Or, if the Commission finds probable cause that the judge has violated the Code of Judicial Conduct, it will order the filing of a statement of charges. CJCRP 17(d)(3).

Before a statement of charges is filed, all proceedings and records are confidential. Wash. Const. art. IV, § 31(2); CJCRP 11(a)(1). Once a statement of charges is filed, further proceedings become public absent a protective order. CJCRP 11(b)(1); Wash. Const. art. IV, § 31(3). Nonetheless, the initial investigative records remain confidential except for those records forming the basis for the Commission's probable cause determination. CJCRP 11(b)(1)-(2).

The next step after a statement of charges is filed is a public fact-finding hearing. At the hearing, the Commission is represented by a Disciplinary Counsel. Following the hearing, the Commission must, in open session, either dismiss the case; admonish, reprimand, or censure the judge; censure the judge and recommend to this Court the suspension or removal of the

judge; or recommend to this Court the retirement of the judge.

Wash. Const. art. IV, § 31(4).

The Code of Judicial Conduct, adopted by this Court, governs judicial conduct in Washington. The Code consists of four Canons, numbered rules under each Canon, and comments that explain each rule. Code of Judicial Conduct—Scope (1). The Canons state overarching principles of judicial ethics. *Id.* at (2). The Commission may discipline a judge only for violating a rule. *Id.*

Within 30 days after the commission issues a decision admonishing, reprimanding, or censuring a judge, the judge has “a right of appeal de novo” to this Court.” Wash. Const art. IV, § 31(6).

B. The Commission Received Complaints About Judge Flood Beginning Almost Immediately After She Took the Bench, and Initiated Disciplinary Proceedings

Judge Flood was elected to the Bremerton Municipal Court in November 2021 and, at all times relevant to this matter,

served as the sole judge for the court. Doc. 121 at 1-2. She is the first woman and first Black judge to hold the position. *Id.*

Almost immediately after Judge Flood took the bench, the Commission started receiving complaints regarding her conduct. In July 2022, the Commission received a complaint alleging Judge Flood displayed an injudicious temperament toward counsel. Doc. 1 at 1. In that same month, the Commission received additional complaints alleging discourteous treatment of attorneys by Judge Flood and other examples of potential misconduct from the bench. *Id.* In August 2022, the Commission received a complaint that Judge Flood engaged in rude and disrespectful conduct toward attorneys. *Id.* In October 2022, the Commission received a complaint that Judge Flood engaged in disrespectful and demeaning treatment of court staff. *Id.*

The Commission conducted a confidential preliminary investigation, and issued a Statement of Allegations in November, 2022, which alleged that Judge Flood may have violated four rules of the Code of Judicial Conduct. Doc. 122.

Judge Flood submitted a response in January 2023 and supplemented it the next month. *Id.* The Commission extended the confidential phase of proceedings when Judge Flood alleged in her response that the complaints against her resulted from racism so that it could investigate this allegation. Doc. 130 at 9.

During this time, both of her own accord and at the urging of Commission staff, Judge Flood engaged in coaching and training with several people, including LaTricia Kinlow, an African American municipal court administrator with 26 years of court experience who specializes in supporting courts with staffing and administrative issues. Doc. 128 at 219-20. Ms. Kinlow recruited Jennefer Johnson, another woman of color working at the Administrative Office of the Courts with decades of experience as a municipal court administrator, to provide support as well. Doc. 128 at 100-02, 222.

The Commission found probable cause and filed a Statement of Charges on July 12, 2023. Doc. 1. The Statement alleged that Judge Flood failed to treat court staff and attorneys

with dignity or respect, and that this resulted in at least a dozen resignations, including every staff member who was employed at the court when Judge Flood took the bench, as well as at least four more whom she later hired. *Id.* at 2. Each of them cited Judge Flood's mistreatment as the sole or a contributing factor in their departure. These departures resulted in hearings not being properly set, cases not being timely docketed, and probationers not being monitored. *Id.* at 2.

The Commission found probable cause existed to believe Judge Flood violated Canon 1, Rules 1.1 and 1.2, and Canon 2, Rules 2.5(A) and 2.8(B) of the Code of Judicial Conduct (*id.* at 3-4):

Rule 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

Rule 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 2.5 Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently and diligently.

Rule 2.8 Decorum, Demeanor, and Communication with Jurors

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

Code of Judicial Conduct Canon 1, Rules 1.1 and 1.2; Canon 2, Rules 2.5(A) and 2.8(B).

The Statement informed Judge Flood that she could file a written answer within 21 days of service, and that failure to answer the charges would constitute an admission. Doc. 1 at 4. Judge Flood did not file any response until 12 days after the deadline. Doc. 6. Her late response consisted of a one-line denial of “all allegations against her,” with nothing further. *Id.* Disciplinary Counsel moved to strike the denial and deem the charges admitted under CJCRP 20(a). Doc. 7. Following

briefing, the Commission denied the motion based on its strong preference to resolve cases on the merits, cautioning counsel to comply with the Rules of Procedure going forward. Doc. 12.

C. The Fact-Finding Proceedings

1. Judge Flood moved to dismiss the charges, disqualify disciplinary counsel, and require the entire Commission's presence at the fact-finding hearing

The Commission named Division II Court of Appeals Judge Erik Price as the Presiding Officer for the fact-finding hearing. Doc. 5. The Commission panel members for the hearing included Black, biracial, and Native American members. Doc. 130 at 24.

Judge Flood filed multiple motions, including a motion to disqualify the Commission's Disciplinary Counsel, which the Presiding Officer denied. Docs. 29, 37. She moved for discovery of the entire investigative file, which the Presiding Officer denied, citing article IV, section 31(3) of the Washington Constitution and RCW 2.64.111. Doc. 60. Judge Flood also moved to dismiss the proceedings on the basis that the Statement

of Charges failed to give fair and adequate notice of the alleged misconduct, which the Presiding Officer also denied. Doc 59.

Judge Flood then filed a second motion to dismiss on the basis that “less than the full eleven-member commission” was present when it made the probable cause finding. Doc 63 at 1. She also requested that the fact-finding hearing be heard by “the entire eleven-member commission” and objected to an attorney alternate member participating as a panel member. Doc. 65 at 3. The Presiding Officer denied these motions, finding that the Commission can act with a quorum (which was present at the probable cause hearing) and that the alternate member’s participation as a panel member is permissible under RCW 2.64.020 and CJC RP 3(c), because the member for whom he serves as an alternate was already serving on a different hearing panel for the Commission. Doc. 83 at 2.

Judge Flood next filed a petition for a writ of prohibition asking this Court to order the Commission to end the proceedings on various grounds, including a claim that it is unconstitutional

for the Commission to act by quorum. Doc. 130, Attach. A. This Court's Commissioner denied the petition, and a panel of this Court denied Judge Flood's motion to modify the Commissioner's ruling. *Id.*

Judge Flood also evaded all attempts by the Presiding Officer to set a date for her deposition. A full chronology of these numerous attempts is set out in the Presiding Officer's order included as Attachment C to the Commission's Decision. Doc. 130, Attach. C (May 2, 2024, Order Regarding Judge Flood's Mot. to Continue Hr'g at 2-5).

2. The fact-finding hearing was postponed when Judge Flood asserted that serious health problems would prevent her participation

Two weeks before the fact-finding hearing was set to begin, Judge Flood requested that the hearing be indefinitely continued because she was having serious health problems that would compromise her ability to participate. Doc. 130, Attach. B. The Presiding Officer granted the continuance without objection from Disciplinary Counsel, but set a date for

Judge Flood to provide a status update on her health, given the urgency of having the matter proceed. *Id.* On several further occasions, the Presiding Officer again ordered Judge Flood to substantiate her health issues by filing (under seal) documentation for her medical problems, but she failed to comply. Doc. 130, Attach. C. Meanwhile, she continued to perform her duties as a municipal court judge. *Id.* Ultimately, the hearing went ahead seven months after it had been scheduled.

3. The fact-finding hearing commenced after the parties stipulated that Judge Flood violated four Code provisions

On the first day of the fact-finding hearing, the parties proffered a joint Stipulation to Facts and Code Violations (Stipulation) and agreed to proceed to a hearing on the appropriate sanction. Doc. 121. The parties stipulated that Judge Flood violated Canon 1, Rules 1.1 and 1.2, and Canon 2, Rule 2.8(B) of the Code of Judicial Conduct “in that she failed to treat some court staff with patience, dignity, and respect, and in treating some court staff in a demeaning and condescending

manner.” *Id.* at 8. The parties also stipulated to certain facts. *Id.* at 1-8. The Stipulation provided that each party could present up to five live witnesses at the fact-finding hearing and submit testimony by declaration for up to six additional witnesses who would be subject to cross-examination. *Id.* at 10.

At the hearing, the five live witnesses testifying included former staff members, experienced administrators who provided support for Judge Flood, and the Bremerton City Prosecutor. Judge Flood testified on her own behalf. Doc. 128 at 677-824.

D. The Commission’s Decision and Order Censured Judge Flood and Recommended Removal from Office

Following the hearing, the Commission entered a Decision and Order making extensive findings of fact tied to the voluminous record, and concluding that Judge Flood violated Rule 2.5(A), in addition to the stipulated violations. Doc. 130. The findings include that Judge Flood’s mistreatment “caused the complete turnover of two entire sets of court staff (but for one individual seeking alternative employment at the time of the hearing), with attendant catastrophic loss of expertise and

experience.” *Id.* at 8. Staff members testified that Judge Flood did not respect their knowledge and experience; was abrupt, confusing, inconsistent, and demeaning; and gave inconsistent and sometimes legally incorrect directives. *Id.* at 7.

The Commission found that this resulted in a “dysfunctional court run by an inexperienced and demoralized staff that failed the public in multiple significant respects.” *Id.* at 7. These failures included mismanagement of court funds; violation of collection agency contracts; late posting of docket entries, mislabeling of hearings; failure to keep law enforcement timely or accurately informed of court actions such as mandatory license suspension or revocation and issuance and rescission of warrants and no-contact orders; stripping personnel of duties without arranging for anyone to fulfill those duties, resulting in multiple competency restoration orders not being fulfilled; failure to process bench warrants in a timely manner; and failure to timely disburse restitution payments. *Id.* at 9.

The Commission also found that, although Judge Flood signed the Stipulation saying she accepted responsibility for being impatient, disrespectful and discourteous to staff and attorneys, and acknowledged these actions showed poor judgment, her testimony demonstrated that she did not accept responsibility for her actions or their consequences to the court and public. *Id.* at 7-8; *see* Doc. 128 at 745:19-753:16.

The Commission determined that Judge Flood's "failure of competence resulted in a devastating loss of personnel and a dysfunctional court which is directly traceable to [Judge Flood's] inability to manage and cooperate with others in a system in which she is the most powerful and responsible player." Doc. 130 at 27. The Commission censured Judge Flood, recommended that this Court remove her from the bench, resulting in her automatic suspension pending this Court's final determination. *Id.* at 33; Wash. Const. art. IV, § 31(8).

The Commission "deliberated long and hard" before concluding that removal was necessary, but ultimately

determined that because multiple remedial measures had failed and Judge Flood did not understand the magnitude or impact of her conduct, it “struggled to imagine what alternative or additional steps it would take for this Respondent to be a successful judicial officer . . . there was no basis to believe that Respondent has the capacity or motivation to change.” *Id.* at 31-32. The Commission concluded: “The possibility of returning a judge to the bench who will likely continue in conduct that harms court staff, the operation of the court, attorneys, the city, and the public, is not an acceptable outcome[.]” *Id.* at 32.

IV. ARGUMENT

A. Standard of Review

This Court reviews Commission decisions imposing discipline upon a judicial officer de novo. *In the Matter of Keenan*, 199 Wn.2d 87, 94, 502 P.3d 1270 (2022); *In re Disciplinary Proc. Against Anderson*, 138 Wn.2d 830, 843, 981 P.2d 426 (1999). “De novo review of judicial disciplinary

proceedings requires an independent evaluation of the record.” *Keenan*, 199 Wn.2d at 94; *In re Disciplinary Proc. Against Turco*, 137 Wn.2d 227, 245-46, 970 P.2d 731 (1999). The Commission’s findings and recommendations are given considerable weight, but the ultimate decision to issue discipline lies with this Court. *Keenan*, 199 Wn.2d at 94. “The burden of proof in judicial disciplinary proceedings is clear, cogent, and convincing evidence.” *Id.* (citing *In re Disciplinary Proc. Against Sanders*, 135 Wn.2d 175, 181, 955 P.2d 369 (1998)).

B. Clear, Cogent, and Convincing Evidence Supports the Commission’s Findings of Misconduct

The Commission properly determined that clear, cogent, and convincing evidence established that Judge Flood violated Canon 2, Rule 2.5(A) of the Code of Judicial Conduct, in addition to the already-stipulated violations of Canon 1, Rules 1.1 and 1.2, and Canon 2, Rule 2.8(B). The record amply supports the Commission’s conclusion that Judge Flood did not meet this standard.

1. The Commission properly considered the Rule 2.5(A) charge

Contrary to Judge Flood's argument, nothing about the parties' pre-hearing Stipulation precluded the Commission from addressing the charge that Judge Flood violated Rule 2.5(A).

Judge Flood's assertion that "disciplinary counsel and Judge Flood had stipulated to [Rule 2.5(A)'s] dismissal," Opening Br. at 24, is unsupported by the record and incorrect. The parties' Stipulation did not address Rule 2.5(A) at all, but rather provided that Judge Flood's conduct violated several other rules, and that the Disciplinary Counsel would not seek the sanction of removal. *See generally* Doc. 121.

The record belies Judge Flood's claim that because "[n]othing in the stipulation provides for litigation of any charge under Rule 2.5(A)," the parties silently agreed that Rule 2.5(A) was not violated. Opening Br. at 25. Instead, the record makes clear that there was no such agreement regarding Rule 2.5(A) and that the Commission retained the authority to determine whether the facts supported the charge of a Rule 2.5(A) violation.

The parties' Stipulation did not dismiss the Rule 2.5(A) charge, but rather narrowed the factual issues remaining to be decided at the hearing. Both parties were explicit that the Stipulation was *not* a "Rule 23 stipulation," under which the respondent judge may stipulate to any or all of the charges in exchange for an agreed sanction. Doc. 128 at 17-19, 28-29. CJCRP 23(a). For a Rule 23 stipulation, if the Commission accepts it, all that is left to do is enter the order. CJCRP 23(b). Here, the Stipulation did not contain an agreed sanction; instead, it contained only the parties' agreement that Judge Flood's conduct violated certain rules, permitting those "factual issues" to be "off the table" for the hearing, as well as the Disciplinary Counsel's agreement not to seek the sanction of removal. *Id.*

To that end, Disciplinary Counsel consistently explained that although the parties did not stipulate to a violation of Rule 2.5(A), this did not remove the Commission's authority to find a violation if the evidence supported it. Nor did the Stipulation foreclose the Commission's authority to recommend

removal as a sanction, or this Court's authority to order removal. Doc. 128 at 42-43. Even though the parties did not agree that Judge Flood's conduct violated Rule 2.5(A), Disciplinary Counsel nonetheless noted that

the Commission . . . is going to be hearing testimony from witnesses and receiving some written testimony with additional information which goes to the issue of sanction, but the Commission retains – the panel retains discretion, so the panel retains the ability to deliberate and to decide amongst itself. We believe that, in fact, there was also a violation of 2.5(A), so this stipulation does not prevent the panel from reaching the conclusion that there was also a violation of 2.5(A).

Id. at 47. The same logic applied to removal as a sanction: per the Stipulation, “Disciplinary Counsel will not be advocating for removal, but the decision about whether to recommend that Judge Flood be censured with removal, that decision is up to the panel and is squarely the panel’s decision now and always. And then it will ultimately be the State Supreme Court’s decision[.]”

Id. Ultimately, at closing argument, Disciplinary Counsel did

maintain the evidence supported a Rule 2.5(A) violation, and Judge Flood's counsel made no objection. Doc. 128 at 836-37.

Judge Flood moved to dismiss the Rule 2.5(A) charge following the fact-finding hearing, raising the same arguments she raises here. Doc. 123. The Presiding Officer denied the motion as untimely, but noted that even if it were timely, "the language of the Stipulation, drafted with the participation of counsel, does not address, much less dismiss, any charges related to Rule 2.5(A)." Doc. 124 at 2. The Commission's decision also noted that "[t]he stipulation made no reference to Rule 2.5(A) and did not include a request to dismiss or remove that charge." Doc. 130 at 27 n.9. And, as the Commission observed, "[i]n closing argument Respondent's counsel, who actively raised objections throughout the contested hearing, made no objection to Disciplinary Counsel's argument that a Rule 2.5(A) violation was proven." *Id.*

As the Commission explained, "[t]he duty of the Commission is fundamental to the well-being of the judiciary,

and charges are broadly allowed, as illustrated in CJCRP 19(b), which allows amendments to be made to a Statement of Charges ‘at any time prior to . . . decision . . . to conform to the proof or set forth additional facts, whether occurring before or after the commencement of the hearing.’” *Id.* The Commission noted that the Rule 2.5(A) violation was “included in the original charge [and] served . . . more than 15 months before the hearing.” *Id.*

Judge Flood’s argument that Rule 2.5(A) was off the table is directly contradicted by the Statement of Charges, the language of the parties’ Stipulation, and the parties’ representations at the hearing.

2. The Commission’s conclusion that Judge Flood violated Rule 2.5(A) is amply supported by the record

Rule 2.5(A) requires a judge to “perform judicial and administrative duties competently and diligently.” The comment to this rule requires, among other things, that a judge must: “seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.”

The record amply supports the Commission's conclusion that Judge Flood violated this rule. The testimony of former staff members and others set out in detail mistreatment of staff, including belittling and demeaning comments, inaccurate directives, and mismanagement. For example, testimony showed:

- Court funds were mismanaged, including instances in which the court's safe was left open with "bags of money" inside, Doc. 128 at 107:21-108:25 (Testimony of Jennefer Johnson) and having no staff available to do daily accounting, *id.* at 113:8-23.
- Docket entries were delayed or erroneous, causing cases not to be calendared and dispositions to be entered improperly. As a result, convictions were docketed as dismissals and no-contact orders were missing. Hearings were mislabeled, funds were not returned on exonerated bonds, and law enforcement and the Department of Licensing were not notified about driving-related convictions, license revocations and restorations, orders for pretrial ignition interlock devices and the like. Doc. 128 at 285:18-293:7 (Testimony of Bremerton City Prosecutor Gary Hersey); *id.* at 513:6-516:8 (Testimony of Christina Rauenhorst); Ex. 286 at ¶ 10, 12 (Decl. of Maurice Baker).
- Law enforcement was not reliably notified about no-contact orders or recissions, and as a result they could not be entered into state and national databases for enforcement purposes.

Doc. 128 at 293:8-300:7 (Testimony of Bremerton City Prosecutor Gary Hersey).

- Restitution payments to victims were delayed even though the money had been paid into the Court. Doc. 128 at 300:19-303:15 (Testimony of Bremerton City Prosecutor Gary Hersey); *id.* at 516:9-517:20 (Testimony of Christina Rauenhurst); Ex. 286 at ¶ 11 (Decl. of Maurice Baker).
- Competency and competency restoration orders were delayed, causing at least one individual to be stuck in jail for 30 days because Western State never received their competency restoration order. Doc. 128 at 303:16-311:16 (Testimony of Bremerton City Prosecutor Gary Hersey).
- Bench warrants were not processed, leading to individuals whose warrants were quashed facing arrest and those with active warrants not facing arrest. In one instance, an individual died of an overdose while an outstanding warrant was not sent to law enforcement. Doc. 128 at 311:17-315:19 (Testimony of Bremerton City Prosecutor Gary Hersey).
- Treatment of court employees and litigants with disrespect or bullying, with a significant negative impact on hiring and retaining staff. *See* Doc. 128 at 133:18-150:16 (Testimony of Jennefer Johnson describing numerous incidents in which Judge Flood “screamed” at, “belittled,” or was otherwise disrespectful with court employees and noting the negative impact on the employees and on hiring and retention); *see also id.* at 228:1-239:4 (Testimony of LaTricia Kinlow); *id.* at 269:6-330:22 (Testimony of Bremerton City Prosecutor Gary Hersey); *id.* at 443:1-8, 449:5-450:5 (Testimony of Ian Coen); *id.* at 526:17-527:6, 543:13-21 (Testimony of Christina Rauenhurst); Ex. 286 at ¶ 14 (Decl. of Maurice

Baker); Ex. 281 (Decl. of Serena Daigle); Ex. 283 (Decl. of Steven DesRosier); Ex. 284 (Decl. of Dawn Williams).

This unrelenting behavior had a devastating effect on the court. It resulted in the departure of every staff member who had been in place when Judge Flood took office, as well as nearly all of the staff members she hired to replace them (and that remaining staff member was looking for alternative employment). These staff members included Serena Daigle, who took a pay cut to join the court as a Senior Legal Technician. She testified that Judge Flood “routinely treated me with impatience and disrespect, directed snide comments at me, and ignored my disability.” Ex. 281 at ¶ 10. Ms. Daigle resigned her position “due to the emotional toll of Judge Flood’s mistreatment.” *Id.* at ¶ 13.

Therapeutic Court Coordinator Steven Desrosier testified that Judge Flood “was critical, very rude, and would talk down to me in court,” and that “one day the judge told me in an admonishing, belittling way that I was not allowed to say

anything in court unless I cleared it with her first.” Ex. 283 at ¶ 7. He became so stressed that he began experiencing panic attacks, and once went into his supervisor’s office to cry because of the Judge’s treatment. *Id.* at ¶¶ 15-16.

Dawn Williams, who was the Court Administrator at Bremerton Municipal Court when Judge Flood took office, characterized the way Judge Flood spoke to her as “condescending, belittling and bullying” using “a mocking, scolding tone of voice, as though talking to a child.” Ex. 284 at ¶ 10. Ms. Williams said she had never had any supervisor treat her the way Judge Flood treated her, and “cried in the car on the way home from work.” *Id.* at ¶¶ 10-11. As a result of this treatment, Ms. Williams took a large pay cut and forfeited 930 hours of sick leave to take another job. *Id.* at ¶ 16.

Probation Officer Ian Coen testified that Judge Flood was “demeaning” and “belittling” to him, treating him as though he was a child and as though he had “no clue what [he] was doing after doing the job for 22 years.” Doc. 128 at 443:1-8. He

testified that Judge Flood’s treatment of him affected his health, including his sleep and mental health. *Id.* at 449:5-450:5. He, too, left the court for another position. *Id.* at 450:19-25.

Court administrator Christina Rauenhorst testified that working with Judge Flood affected her physically and emotionally. She was “constantly exhausted, stressed out,” and working with the judge was affecting her mental health to the point that she began taking anxiety medication. Doc. 128 at 526:17-527:6, 543:13-21.

Despite this, and despite working with three outside experts in court administration, all of whom were initially empathetic and enthusiastic about working with Judge Flood—LaTricia Kinlow, Jennefer Johnson, and Maurice Baker—Judge Flood consistently rejected their suggestions, failed to modify her behavior, and took no responsibility for the situation of the court or changing her conduct to help things improve. *E.g.*, Doc. 128 at 128:1-234:23 (Testimony of LaTrisha Kinlow); Ex. 286 at 16-19 (Decl. of Maurice Baker).

The Commission's finding that Judge Flood failed to perform her duties competently and diligently is amply supported by the record.

3. The Commission's decision does not rely on unsupported findings of fact

Contrary to Judge Flood's argument, the Commission's decision relies on findings of fact that are fully supported by the record.

First, Judge Flood claims the Commission's statement that she "caused the complete turnover of two entire sets of court staff," Doc. 130 at 8, is false and unsupported, but she inexplicably truncates this quote to omit the Commission's caveat. Opening Br. at 29. The full quote is: "Respondent caused the complete turnover of two entire sets of court staff (but for one individual seeking alternative employment at the time of the hearing), with attendant catastrophic loss of expertise and experience." Doc. 130 at 8. The Commission also explained in more detail that "[b]y February of 2023, all the original staff members had left the court, in part or entirely because of

Respondent's conduct toward them and general mismanagement. The replacement staff members hired under Respondent's authority were less experienced and by the time of the hearing, all of them had left the court; except for new administrator Christina Rauenhorst, who was herself looking for different work at the time of the hearing. Doc. 130 at 7.

The Commission's statement is not a "dramatic overstatement of the evidence," *cf.* Opening Br. at 29. The point of these findings was to discuss the serious impact on the court, and on its stakeholders, of the significant loss of staff during Judge Flood's tenure. These harms included but were not limited to mismanagement of court funds, violation of contracts, unprocessed bench warrants and no-contact orders, and restitution payments not timely disbursed. Tellingly, Judge Flood does not assert that the impact of the staff turnover the Commission described is unsupported or exaggerated.

Second, without citation to the decision, Judge Flood claims it was "patently unfair" that the Commission

“unjustifiably concluded that any mistake made by the court was caused by Judge Flood.” Opening Br. at 29. Judge Flood claims the “record was replete with testimony as to staff failures that – like all workers – were not tied to their supervisor’s directions.” *Id.* But the Commission’s finding was not that all staff mistakes were caused by Judge Flood’s directions, although some were, but rather that the loss of expertise and experience as a result of Judge Flood’s behavior had detrimental impacts on the court’s ability to function. *See* Decision at 8-9. This, too, has ample support in the record, as discussed above.

Third, Judge Flood objects to the Commission’s finding that “[r]emedial measures and guidance from experienced and motivated experts have been offered to and rejected by Respondent.” Opening Br. at 30 (quoting Doc. 130 at 32). In support, she asserts that the Commission’s statement that Judge Flood “‘engaged in coaching and training with an expert of her choosing,’ [is] a fact not in the record.” Opening Br. at 30

(quoting Doc. 130 at 9). But Judge Flood testified about engaging in coaching and training with coaches she chose:

Q. [by Disciplinary Counsel] And after the CJC contacted you about the complaints, you worked with a coach; is that right?

A. [by Judge Flood] I work with coaches throughout my career.

Q. Do you remember, are you familiar with a woman named Talisa Lavarry, L-A-V-A-R-R-Y, she goes by Tali, T-A-L-I?

A. Yes.

Q. You worked with Ms. Lavarry as a coach; is that right?

A. I worked with her to do some work with me and the court.

Q. And you chose to work with Ms. Lavarry is that right?

A. Everyone that I work with, I have chosen to do so.

Q. Is that a yes, you did choose to work with Ms. Lavarry?

A. Yes.

Doc. 128 at 755:22-756:8.

Judge Flood seems to argue that the Commission only made findings about help Judge Flood sought in the days before the fact-finding hearing, and that there “was no evidence regarding Judge Flood’s actions in the months or weeks prior to

the hearing.” Opening Br. at 31. This is incorrect. The Commission discussed the long-term help Judge Flood received at considerable length, including that she “early on . . . reached out for help to many people who came to her assistance, including LaTricia Kinlow, a highly experienced and well-respected African American district court administrator with 26 years of court experience.” Doc. 130 at 10. Ms. Kinlow and another municipal court administrator, Jennefer Johnson, returned repeatedly to the court “[o]ver a period of four months,” and recruited other courts to provide their staff to support Judge Flood as well. *Id.* at 10-12.

Despite this assistance, however, the situation did not improve. Instead, Ms. Kinlow and Ms. Johnson testified that essential court functions were not being performed, that Judge Flood refused to accept their suggestions, and that they personally observed Judge Flood’s unprofessional behavior towards court staff. *E.g.*, Doc. 128 at 101:25-178:15 (Testimony

of Jennefer Johnson); *id.* at 220:8-248:24 (Testimony of LaTricia Kinslow); Ex. 286 (Decl. of Maurice Baker).

Judge Flood's claims that the Commission's findings are unsupported by the record are without merit.

4. The Commission correctly found insufficient evidence to substantiate Judge Flood's claim that the accusations against her were the product of racism

The Commission carefully and seriously considered Judge Flood's contention that the misconduct allegations resulted from racism. Indeed, the Commission acknowledged:

There is no rational basis to deny the toxic and pervasive role that racism has historically played and continues to play in the American justice system, and the State of Washington and the City of Bremerton are not exceptions to this reality. The Commission panel members for this hearing include Black, biracial, and Native American members, and all the members acknowledge the existence of both targeted and systemic racism in our culture and acknowledge that it is inevitable that as a Black woman, Respondent experiences racism and sexism."

Doc. 130 at 24.

Further, despite its concern over delay in the context of allegations of significant ongoing harm, the Commission nonetheless extended the investigative phase of the case when it received Judge Flood's supplemental response to the confidential Statement of Allegations to focus on her allegation that the complaints were based on racism. Doc. 130 at 9. However, the Commission's investigation did not substantiate that contention. Doc. 130 at 25. LaTricia Kinlow, for example, testified that, although she was alert to looking for institutional or workplace racism, including in the form of micro- or macro-aggressions, she "did not witness anything like that." Doc. 128 at 234:24-235:7; see also *id.* at 251: 4-14.

The Commission specifically addressed the few specific instances Judge Flood identified. It acknowledged that a former employee's persistence in using Judge Flood's first name was annoying and disrespectful. Doc. 130 at 25. Judge Flood also noted a probation officer's testimony that she "shush[ed] him as though he were a small child," which she described as "racist in

tone.” Doc. 130 at 25. The Commission correctly characterized this description as not reasonable in context, given the probation officer’s extensive testimony, which the Commission found “highly credible,” that Judge Flood belittled and demeaned him to the extent he felt forced to leave a job he had loved for more than 20 years. Doc. 130 at 14, 25. *See, e.g.*, Doc. 128 at 443:1-455:16; *see also id.* at 138:23-141:11.

The Commission noted that some of Judge Flood’s witnesses testified generally that she was sometimes treated with disrespect by attorneys or staff, but no specific incidents were described, and there was no testimony that the treatment was universal or typical. Doc. 130 at 25.

Judge Flood argues that the alleged misconduct, which involves serious dysfunction in the court, was “primarily related to Judge Flood’s tone and mannerisms,” Opening Br. at 31 a characterization that severely understates the nature and extent of the charges and findings. The Commission correctly found that the record evidence did not support Judge Flood’s contention

that racism was the cause of the accusations against her. Instead, the record amply supports the Commission's conclusion that Judge Flood's "failure of competence resulted in a devastating loss of personnel and a dysfunctional court which is directly traceable to [her] inability to manage and cooperate with others[.]" Doc. 130 at 27.

C. The Court Should Adopt the Commission's Recommended Sanction of Removal

1. The Sanction Recommended by the Commission is Warranted by the Facts

There is no dispute that Judge Flood violated Canon 1, Rules 1.1 and 1.2 and Canon 2, Rule 2.8(B) of the Code of Judicial Conduct. Doc. 121 at 8. Judge Flood also violated Rule 2.5(A), as discussed above. Because Judge Flood concedes that she violated the Code of Judicial Conduct, this Court must determine the appropriate sanction, Wash. Const. art. 4, § 31, giving "serious consideration to the Commission's recommendation." *Matter of Deming*, 108 Wn.2d 82, 117, 736 P.2d 639 (1987). Here, the Court should adopt the

Commission's unanimous recommendation to remove Judge Flood from office. Doc. 130 at 33.

The sanction imposed must be “appropriate to the level of culpability.” CJCRP 6(d). In determining the appropriate sanction, the Court’s “‘primary concern will be to provide sanctions sufficient to restore and maintain the dignity and honor of the position and to protect the public from any future excesses[,]’” and the sanctions “‘must also be sufficient to prevent reoccurrences.’” *Deming*, 108 Wn.2d at 117 (quoting *In re the Disciplinary Proc. Against Buchanan*, 100 Wn.2d 396, 400, 669 P.2d 1248 (1983)); CJCRP 6(d).

The Commission carefully analyzed the factors that are relevant in determining the appropriate sanction, as articulated in *Deming* and subsequent cases, and as codified in CJCRP 6(c). Doc. 130 at 27-32. The nonexclusive factors the Court considers include the characteristics of the misconduct and the service and demeanor of the judge. Regarding the characteristics of the misconduct, the Court considers:

- (A) Whether the misconduct is an isolated instance or evidence of a pattern of conduct;
- (B) The nature, extent, and frequency of occurrence of the acts of misconduct;
- (C) Whether the misconduct occurred in or out of the courtroom;
- (D) Whether the misconduct occurred in the judge's official capacity or . . . private life;
- (E) Whether the judge flagrantly and intentionally violated the oath of office;
- (F) The nature and extent to which the acts of misconduct have been injurious to other persons;
- (G) The extent to which the judge exploited the judge's official capacity to satisfy personal desires; and
- (H) The effect the misconduct has upon the integrity of and respect for the judiciary.

CJCRP 6(c)(1); *see also Deming*, 117 Wn.2d at 119-20.

The factors the Commission identified as most concerning here were the nature, extent, and frequency of occurrence of the acts of misconduct (CJCRP 6(c)(1)(A), (B)), and the nature and extent to which these acts have been injurious to others (CJCRP 6(c)(1)(F)). Doc. 130 at 27. This included that testimony and other evidence that multiple court employees “were humiliated and personally and professionally undermined in

ways that impacted their physical and emotional health to the point that more than one person contemplated self-harm.” Doc. 130 at 27. It also included harm to the community from this single-judge court’s inability to function, given the exodus of staff. *Id.* at 27-28. As the Commission concluded, “the combination of damage done to individuals and the wide-ranging harm to the operation of this court is some of the most serious addressed in the Commission’s history.” *Id.* at 28.

The Commission also determined that nearly all the other aggravating factors in CJCRP 6(c)(1) are present, with the exception that the Commission found no indication that Judge Flood exploited her official capacity to satisfy personal desires or flagrantly or intentionally violated the oath of office. Decision at 28 (CJCRP 6(c)(1)(E), (G)). However, the evidence showed a pattern of condescending, belittling ill-treatment by Judge Flood, in her official capacity and in the courtroom and the courthouse (CJCRP 6(c)(1)(C), (D)), driving staff members and attorneys to leave the court, and causing “a possibly unparalleled

litany of failures” at the court, with a detrimental effect to public confidence in the court’s integrity and competence (CJCRP 6(c)(1)(H)). Doc. 130 at 28-29.

Regarding the service and demeanor of the judge, the Court looks to:

- (A) Whether the judge has acknowledged or recognized that the acts occurred;
- (B) Whether the judge has evidenced an effort to change or modify the conduct;
- (C) The judge’s length of service in a judicial capacity;
- (D) Whether there has been prior disciplinary action concerning the judge;
- (E) Whether the judge cooperated with the commission investigation and proceeding.

CJCRP 6(c)(2); *see also Deming*, 108 Wn.2d at 119-20.

The record supports the Commission’s determination that these are largely aggravating factors here. Doc. 130 at 29-30. Despite stipulating to all but one of the charges, Judge Flood’s testimony consistently denied responsibility for any consequences of her conduct (CJCRP 6(c)(2)(A)). The evidence showed that Judge Flood was offered help from numerous

sources, but rejected advice and attempts to change the behavior (CJCRP 6(c)(2)(B)). And although Judge Flood's length of service is short, with no prior disciplinary action, the complaints and resulting investigation began almost immediately after she assumed the bench and the concerns continued throughout her tenure (CJCRP 6(c)(2)(C), (D)).

Finally, the Commission's findings that Judge Flood failed to cooperate with the investigation and proceeding (CJCRP 6(c)(2)(E)) is fully supported by the record. In making this finding, the Commission cited numerous actions by Judge Flood that delayed or hindered the proceedings. These included but were not limited to failing to timely respond to the Statement of Charges, and then filing a one-sentence denial of all charges, necessitating a full round of briefing regarding the adequacy of this response (Docs. 6, 7, 8, 10, 11, 12); noncompliance with scheduling and discovery orders, including canceling her scheduled deposition two days in advance, rejecting all alternative dates, and when the deposition finally

occurred, refusing to answer even basic questions (Doc. 130, Attach. C); attempting to dismiss the proceedings in multiple ways, including filing of a writ of prohibition to this Court asking it to order the Commission to end the proceedings (Doc. 130, Attach. A); and delays in scheduling the fact-finding hearing based on the Judge's claims of ill health, which she repeatedly declined to substantiate despite being ordered to do so (Doc. 130, Attachs. B, C).

Judge Flood's argument that the Commission's noncooperation finding was substantially premised on annoyance with her former counsel Vonda Sergeant's "strident advocacy" distorts the record. *See* Opening Br. at 15-17. The Commission nowhere relies upon or even mentions counsel's language or tactics in the section of its decision addressing noncooperation as a factor in determining discipline. *See* Doc. 130 at 30-31.

Judge Flood also challenges the Commission's determination that she was noncooperative in substantiating her

medical condition and claims that she “complied with her obligation to verify her ongoing serious medical issues and her associated healthcare obligations.” Opening Br. at 18-21. The record demonstrates the contrary.

Just days from the long-scheduled fact-finding hearing, Judge Flood contended that she had dire medical conditions that made participation impossible. Doc. 104 at 2. The Presiding Officer continued the hearing and ordered Judge Flood to submit supporting documentation. *Id.* When this was not forthcoming, the Presiding Officer scheduled a review hearing and ordered Judge Flood to provide an update (under seal) on her health issues, but Judge Flood did not comply and the review hearing was delayed several times. *Id.* The Presiding Officer then ordered monthly update submissions on the progress of her health and work status, but Judge Flood’s submissions contained little or no information about her health. *Id.* Although Judge Flood continued to perform her judicial duties, she repeatedly claimed a need to delay the disciplinary proceedings. *Id.* at 3-4.

In an order granting Disciplinary Counsel's motion for a subpoena to obtain Judge Flood's health records, the Presiding Officer found:

Respondent has failed to comply with [the orders requiring her to substantiate her health claims] on every occasion. Despite the passage of four months and multiple orders, nothing actually substantiating the . . . oral representations of these health conditions has been provided. The only concrete information that has been provided is that Respondent appears to be fully performing her official duties in contrast to the hardships she represented when she sought a continuance of these proceedings. The unfortunate and unavoidable conclusion is that Respondent is intentionally not cooperating with the Commission's proceeding as is required under the Code, and is a potential aggravating factor in the event of a finding of misconduct.

Id. at 5 (citing Canon 2, Rule 2.16(A) Cooperation with Disciplinary Authorities). Judge Flood's allegations of fact in her opening brief to this Court were not presented to the Presiding Officer (or Disciplinary Counsel) and are not part of the record.

Of course, judges subject to disciplinary proceedings may challenge the proceedings and vigorously defend themselves,

and the Commission's decision suggests nothing to the contrary. Judge Flood asserts that cooperation in this context "means to respond to the charges, appear when ordered to, and to make oneself available for questioning if requested." Opening Br. at 17-18. But these are the very things that the Commission found Judge Flood did not willingly do. The Commission's determination that Judge Flood did not cooperate with its investigation and proceedings is supported by clear, cogent, and convincing record evidence.

Taking these aggravating factors into consideration, the Commission's recommendation to remove Judge Flood from the bench is warranted. The Commission approached Judge Flood's defenses and counter-allegations respectfully and fully. This Court should adopt the Commission's recommendation.

2. The Discipline Recommended in this Case is Consistent With That Imposed in Other Cases

Judge Flood cites multiple disciplinary proceedings that did not result in removal, arguing that they undermine the Committee's recommendation here. But the cases she relies on

are not comparable to this case, and she makes little effort to explain how they are relevant. Because, as explained above, discipline determinations are fact-based determinations based on aggravating and mitigating factors, cases with inapposite fact patterns are of little help to the Court.

In *In re Disciplinary Proceeding Against Eiler*, 169 Wn.2d 340, 236 P.3d 873 (2010), attorneys and pro se litigants filed complaints against Judge Eiler for demeaning courtroom behavior, not mistreatment of staff. The Committee reprimanded Judge Eiler for improper demeanor, but complaints continued, resulting in a second sanction. The second time, the Committee recommended a 90-day suspension. This Court upheld one finding of misconduct, reversed three others, and ordered a shorter five-day suspension.

Judge Flood's conduct is substantially different in degree and impact than that in *Eiler*. While Judge Eiler was disciplined for rude courtroom behavior generally directed towards litigants, Judge Flood's conduct drove away competent staff, resulting in

a chronically dysfunctional court that harmed not only the employees who left their positions as a result of her actions, but also the public by, for example, failing to timely issue and recall warrants and protection orders, mislabeling dockets, mishandling funds, delaying competency evaluations, and failing to provide timely restitution payments. This substantial harm to the public in a one-judge court, in addition to the harm to nearly two full sets of court personnel who left their jobs as a result of her conduct, warrants a significantly more severe level of discipline.

Next, Judge Flood cites a stipulated order in *In re Felsted*, CJC No. 913-F-19 (1990), but the case is so factually dissimilar as to be of no help here. In *Felsted*, the judge on several occasions dismissed notices of traffic infractions for individuals who made contributions to law enforcement services, and on occasion used his chambers to discuss private business matters. There was no allegation that the conduct disrupted judicial functions.

Likewise, the facts in the stipulated order in *In re Furman*, CJC No. 3245-F-84 (2000), are wholly inapposite. In *Furman*, the judge used court computer equipment to access adult-only sites, online auction sites, personal financial service sites, shopping sites and personal travel sites, and received a public censure. Judge Flood fails to mention that, in addition to the censure, Judge Furman agreed to resign from judicial office and reimburse the county for the cost of its internal investigation.

The stipulated resolution in *In re Bridge*, CJC No. 4050-F-106 (2003) is also inapposite. In *Bridge*, the justice was arrested for driving while under the influence of alcohol and hit and run of an unattended vehicle. The hit and run charge was dismissed on agreement of the parties, and the justice entered a deferred prosecution on the charge of driving under the influence of alcohol. The stipulation listed several mitigating factors, including that the misconduct was an isolated instance that occurred outside the courtroom and not in the justice's official capacity, and that the judge admitted and accepted responsibility

for the conduct, immediately ceased use of alcohol and was in full compliance with her treatment program, had an exemplary 12-year record of judicial service, and cooperated fully with the Commission's investigation and proceeding.

Nor is the stipulated resolution in *In re Tanner*, CJC Nos. 8889-F-180, 11211-F-207 (2023), factually apposite. The judge in *Tanner* was reprimanded by the Commission after being convicted of driving under the influence of alcohol. He was subsequently arrested again for driving under the influence. He self-reported the arrest to the Commission and advised them that he was immediately entering intensive treatment for alcoholism. He successfully completed a 28-day inpatient treatment program and entered a deferred prosecution for the second DUI. The agreed stipulation noted that the conduct could justify removal from the bench, but that the judge was a “dedicated, competent, hard-working judge who is well-liked by those he works with,” there was no indication that his alcoholism affected his judicial performance, and that he “manifested in word and deed his

complete acceptance of his responsibility to change, and has manifested without excuses entirely positive responses to treatment.” Stipulation, Agreement & Order of Censure With Recommendation of Suspension at 6 (available at https://www.cjc.state.wa.us/materials/activity/public_actions/2023/11211StipulationFINAL.pdf). The judge agreed to promptly submit his resignation from the bench if he consumed any quantity of alcohol in any location in the future. *Id.* As agreed in the parties’ Stipulation, the judge was censured and suspended for 30 days. Order (Nov. 13, 2023) (available at https://www.cjc.state.wa.us/materials/activity/public_actions/2023/11211SupremeCourtOrder.pdf).

The stipulated resolution in *In re Brown*, CJC No. 11478-F-212 (2024) involved a district court judge who acknowledged making comments to an African American litigant that were impatient, undignified, and discourteous, and which appeared to demonstrate bias. Immediately after the fact-finding hearing, the judge recognized that his conduct had been so inappropriate that

he should no longer be a judicial officer, resigned from the bench and from the Washington State Bar Association, and indicated his intent to no longer practice law or service in any judicial capacity. Stipulation, Agreement & Order of Censure at 5 (available at https://www.cjc.state.wa.us/materials/activity/public_actions/2024/11478StipulationFINAL.pdf). Given these facts, the Commission and judge agreed that the stipulated misconduct would be sanctioned by the imposition of a censure. *Id.*

The stipulated resolution in *In re Gallina*, CJC No. 9422-F-200 (2022) similarly involved inapposite facts. In that matter, the judge was arrested on felony charges of second-degree rape, second-degree assault, and indecent liberties involving court staff. He self-reported the arrest to the Commission the next day, and then went on administrative leave and never again served as a judge. He pleaded guilty to reduced charges and was incarcerated. The stipulated resolution imposed a censure, and did not include a recommendation to this Court for suspension or

removal because he was no longer a judicial officer. Stipulation, Agreement, and Order of Censure (available at https://www.cjc.state.wa.us/materials/activity/public_actions/2022/9422StipulationFINAL.pdf). The stipulated resolution provided that he would neither seek nor serve in any position performing judicial functions again. *Id.*

Finally, the stipulated resolution in *In re Mahoney*, CJC No. 10807-F-202 (2022), also involved a judge who stepped down after violating the Code. That judge stipulated that she violated the Code by using the “N-word” in a staff meeting (which she self-reported to the Commission), introducing a new judge to a Black staff person by describing the staff person as someone who loves watermelon, and making generalities about Asian drivers.¹ The judge stepped down as presiding judge and did not file to renew her term of office. The Commission issued

¹ The specific quotation attributed to Judge Mahoney in Judge Flood’s brief is incorrect; it appears nowhere in the stipulation.

a reprimand, and the judge agreed that prior to seeking or serving in a judicial capacity in the future, she would complete a course of study focused on the impact of inherent bias and microaggressions. Stipulation, Agreement & Order of Reprimand (available at https://www.cjc.state.wa.us/index.php?page=activity§ion=search_discipline&complaint=10807).

The cases Judge Flood relies on from outside Washington fare no better. *In re Horan*, 85 N.J. 535, 428 A.2d 911 (1981), involved a single incident in which a municipal court judge appeared to side with one party in a trespass and malicious cutting of hedges dispute between neighbors. He was charged with violating the requirement to preside in a dignified, courteous, patient and impartial manner. The court, noting that this was a “[s]ingle incident” and “does not indicate a course of conduct,” reprimanded the judge and warned that similar future conduct may result in removal from office. *Horan*, 428 A. 2d at 912-13. Notably, the court observed that “[t]he municipal court is, in many respects, the most important in our judicial system.

For many citizens, it is their only exposure to the courts and judges of this State. Accordingly, the entire system is measured by their experience in the municipal court.” *Id.* at 912.

In re Judicial Disciplinary Proceedings Against Michelson, 225 Wis.2d 221, 591 N.W.2d 843 (1999), similarly involved a single instance of intemperate comments from the bench by a municipal court judge to a person requesting additional time to pay a fine. The court reprimanded the judge, distinguishing the case from others involving numerous incidents of misconduct for which judges were removed or suspended. The court also noted that the judge’s “attempt to apologize, even though flawed, [showed] a level of remorse not evident in the prior cases,” and that the judge had fully cooperated with the Judicial Commission. *Michelson*, 519 N.W.2d at 846.

In re Complaint Against Lindner, 271 Neb. 323, 710 N.W.2d 866 (2006), also involved a single instance, in which a county court judge addressed a defendant in a “harsh and angry tone and demeanor” and made a derogatory remark in apparent

reference to the defendant. 710 N.W.2d at 868-70. The court imposed a sanction of public reprimand. The court noted that the judge did not intend his remark to be overheard and it was not made directly to the defendant, acknowledged the remark was insensitive and inappropriate, and offered apologies. The court further noted that the judge had been on the bench for 22 years and this was the first disciplinary action against him. “Evidence was received that [the judge] ordinarily treats individuals equally and demonstrates no bias from the bench,” and there was “no evidence of a pattern of unacceptable behavior on his part.” *Id.* at 872.

Finally, *Dodds v. Commission on Judicial Performance*, 12 Cal.4th 163, 906 P.2d 1260 (1995), involved five incidents: repeatedly interrupting and badgering a plaintiff during a settlement conference; interrupting a different plaintiff’s counsel and disparaging their arguments; becoming angry after the parties in a third case reached a settlement and requiring them to remain in the courtroom until late in the evening; and making a

joke outside the courtroom about chiropractors providing excessive treatment. In addition, the judge observed a fellow judge removing the air from the tire of a van parked in that judge's assigned parking space, but did not try to dissuade his colleague or report the incident. When a detective investigating the incident later came to the observing judge's courtroom, the judge told the detective he did not want to make a statement, and suggested to his staff that they decline to make statements. The detective spoke with the district attorney, who phoned the judge and accused him of obstructing justice. The judge then arranged to meet with the detective and the judge who had deflated the tire, who gave a statement admitting the conduct. After this admission, the petitioner also gave a statement.

The court did not sanction the judge, determining that he was not acting in a judicial capacity when he interfered with the investigation into the tire deflation incident, and therefore his interference in the investigation was not willful misconduct. The Court further noted that the judge had served for nearly 20 years

“with praise from many members of the bar and with the approval of the electorate” and was “a talented judge who is often sought for his ability to settle difficult cases.” *Dodds*, 906 P.2d at 1270-71.

None of these cases supports the argument that Judge Flood should receive a lesser sanction than removal. Many of the cases involve isolated incidents of conduct from judges who had been on the bench for years without any previous misconduct allegations, or are situations with mitigating factors that are not present in this case. Here, by contrast, complaints and dysfunction began almost immediately after Judge Flood became a judge, and caused serious harm. The Court should order Judge Flood’s removal from the bench.

D. The Commission May Conduct Fact-Finding Hearings and Issue Decisions By Quorum

Finally, Judge Flood renews an argument this Court previously rejected (*see* Doc. 130, Attach. A), contending that it was unconstitutional for the Commission to act by quorum in holding the fact-finding hearing and issuing its decision.

Judge Flood does not mention or refer to this argument in her Statement of the Issues or Assignments of Error.

This Court considered and rejected this argument when Judge Flood sought a writ of prohibition preventing the proceedings from going forward on several grounds, including an argument that a nine-member panel for the fact-finding hearing would be “ultra vires” and unconstitutional. As the Commissioner properly ruled, “the [C]ommission’s procedural rules allow for such a panel, the [C]onstitution is silent on whether all members of the [C]ommission must sit on the panel deciding a fact-finding hearing, and there is no authority . . . supporting the proposition that a nine-member panel deprives the [C]ommission of jurisdiction over a fact-finding hearing.” Doc. 130, Attach. A (Comm’r’s Ruling) at 7-8. A panel of this Court denied Judge Flood’s motion to modify. *Id.* (Order Denying Mot. to Modify).

Judge Flood argues again here that the Washington Constitution prohibits the Commission from acting through a

quorum by not explicitly granting authority to act by quorum. Opening Br. at 23-24. This argument is precluded by the law of the case doctrine, which “stands for the proposition that once there is an appellate holding enunciating a principle of law, that holding will be followed in subsequent stages of the same litigation.” *State v. Johnson*, 188 Wn.2d 742, 755, 399 P.3d 507 (2017) (quoting *Roberson v. Perez*, 156 Wn.2d 33, 41, 123 P.3d 844 (2005)). Because this issue has been decided by this Court, Judge Flood should not be permitted to revisit it now.

If the Court does revisit this issue, it should conclude, as it previously did, that the Commission may act by quorum. The Constitution vests power in the Commission to investigate complaints against judges, determine whether probable cause exists for conducting a public hearing on those complaints, and conduct the public hearing. Wash. Const. art. IV, § 31 (1)-(4). There is nothing in the Constitution that requires all 11 members of the Commission to be present and participate at every stage of each proceeding and collectively make every

decision in every case. Instead, all that the Constitution specifies is the membership of the Commission: three judges, two persons admitted to the practice of law in Washington, and six persons who are not attorneys. Wash. Const. art. IV, § 31(1); *see also* chapter 2.64 RCW (similarly lacking any requirement for the full commission membership to take action).

Indeed, Judge Flood acknowledges that the Constitution expressly authorizes the Commission to establish its own “rules of procedure for commission proceedings including due process and confidentiality of proceedings.” Wash. Const. art. IV, § 31(10); *see* Opening Br. at 23. The Commission exercised that authority when it established Rule of Procedure 3(c), which allows six members of the Commission to constitute a quorum that can make decisions in a proceeding:

Quorum. Six members of the commission shall constitute a quorum for the transaction of business. A vote of six members of the commission shall be required to adopt rules. A finding of probable cause shall require the concurrence of six members of the commission. The concurrence of six members of the

commission shall be required to make a decision in a proceeding.

CJCRP 3(c). A “member” of the Commission “includes alternates acting as members during a member’s disqualification or inability to serve.” CJCRP Terminology. The October 2024 fact-finding hearing took place before presiding officer Erik Price and eight additional members of the Commission. Doc. 130 at 1. The Constitution, governing statutes, and rules authorize this.

Other parts of the Commission’s Rules of Procedure also support action by fewer than all 11 members of the Commission. Rule of Procedure 3(f), on the duty and authority of the commission, refers twice to “panel members” and once to a “hearing panel.” CJCRP 3(f). Rule of Procedure 24(b)(9) states that “[a]t least six members, or their alternates, must continually be present during presentation of testimony at the hearing.” CJCRP 24(b)(9).

Common law principles support that a majority of a judicial body is a quorum. *F.T.C. v. Flotill Prods., Inc.*, 389 U.S. 179, 183 (1967) (“[I]n the absence of a contrary statutory provision, a majority of a quorum constituted of a simple majority of a collective body is empowered to act for the body.”). The Vermont Supreme Court’s decision in *State v. Mills*, 167 Vt. 365, 706 A.2d 953 (1998), is persuasive. In that case, the five-member Vermont Supreme Court adopted a procedure allowing a three-judge panel to decide certain cases. *Id.* at 366. The appellant argued that three-judge panels were unconstitutional because the Vermont Constitution specifies that the Supreme Court is made up of five justices. *Id.* at 367. The court held that in the absence of a governing provision specifying a quorum for the court, the common law provided that a majority of the judicial body was a quorum. *Id.*

Similarly, the Washington Constitution does not specify a quorum for the Commission, so—even apart from the Commission’s rule—this Court should apply the common law

rule that a “majority” is a quorum. RCW 4.04.010 (common law is the law of the state, so far as it is not inconsistent with the Constitution and laws of the United States or of the State of Washington); *see also* Op. Att’y Gen. 4 (1999) (“In the absence of a governing provision, the common law provides a majority of a judicial body is a quorum.”). In short, nothing requires all 11 members of the Commission to be present at each stage of a proceeding. Given the constitutional makeup of the Commission and the absence of any option for pro tem members, Judge Flood’s argument is not only contrary to law but would make operation of the Commission virtually impossible as a practical matter.

According to the plain language of the Commission’s Rule of Procedure 3(c) and common law principles, only six Commission members or their alternates must be present during Commission proceedings, not all 11 members. The Commission has jurisdiction to conduct a disciplinary hearing with a quorum and lawfully did so here.

V. CONCLUSION

The Commission's findings and recommendation to this Court are supported by clear, cogent, and convincing evidence. The Commission respectfully requests that this Court affirm the findings of misconduct and recommends the removal of Judge Flood from her judicial office.

This document contains 10875 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 22nd day of August 2025.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing was electronically filed in the Washington State Supreme Court and electronically served on all parties of record, according to the Court's protocols for electronic filing and service.

RESPECTFULLY SUBMITTED this 22nd day of August 2025.

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