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No. 200,701-5

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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In the Matter of the Disciplinary Proceeding Against

THE HONORABLE JUDITH R. EILER

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BRIEF ON REPLY  
OF THE COMMISSION ON JUDICIAL CONDUCT

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## I. REPLY ARGUMENT

### A. Clear, Cogent and Convincing Evidence Supports the Commission's Determination that Respondent Violated Canons 1, 2(A), 3(A)(3) and 3(A)(4) of the Code of Judicial Conduct.

#### 1. Canons 1 and 2(A).

Respondent argues that evidence concerning her treatment of pro se litigants cannot support charges that she failed to uphold the integrity and independence of the judiciary, and failed to avoid impropriety and the appearance of impropriety, under Canons 1 and 2(A), because "the demeanor of a judge, by itself, does not constitute a violation" of these canons. Resp. Br., p. 18. Respondent casually relies on portions of the official comments to Canons 1 and 2(A) as support for this position, but fails to properly analyze the meaning and import of these two provisions.

Canon 1 states the core principles of the Code and illustrates the interrelationship of its key concepts: public confidence in the judiciary, judicial independence, and compliance with the law, including compliance with the applicable code of judicial conduct. Lisa Milord, The Development of the ABA Judicial Code, p. 12 (ABA 1992). The text of Canon 1 itself makes clear that judges, who embody the justice system, have an obligation to observe the highest standards of behavior:

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in

establishing, maintaining and enforcing high standards of judicial conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 1. The Commission highlighted the portion of the Canon it found significant in its decision, making it clear on what basis it determined that Respondent violated Canon 1. Commission Decision, p. 10. Respondent makes no effort to address this portion of the Canon. As discussed in Disciplinary Counsel's opening brief, and in the Commission Decision, overwhelming evidence at trial supports the finding that Respondent failed to observe "high standards of judicial conduct" by her repeated abusive conduct toward pro se litigants and others in her courtroom.

Concerning Canon 2(A), Respondent again points to a portion of the official comment (judges should "distinguish between proper and improper use of the prestige of office in all their activities," Resp. Br., p. 19), while ignoring the text of the Canon itself, which, again, was highlighted by the Commission, in relevant part, as follows:

Judges . . . should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commission Decision, p. 10. Far from acting in a manner that promotes public confidence in her integrity – that is, her commitment to ethical principles – Respondent's habitually disrespectful behavior from the

bench undermines confidence in her decisions, and creates the impression that she is ruling from whim or personal dislike. “[J]udges must recognize the gross unfairness of becoming a combatant with a party . . . Conduct reminiscent of the playground bully of our childhood is improper and unnecessary.” ALFINI ET AL., JUDICIAL CONDUCT AND ETHICS, § 3.02A, pp. 3-12-3-13 (4th ed. 2007). As discussed in the opening brief, ample evidence attested to the manner in which Respondent’s conduct damaged public perception of the judiciary and the judicial system. *See* Br. of CJC, pp. 10-12.

**2. Canon 3(A)(3).**

Respondent challenges the Commission’s determination that she failed to perform her adjudicative responsibilities in a “patient, dignified and courteous” manner, as required by Canon 3(A)(3), on grounds of insufficient evidence. Respondent asserts that the Commission’s decision was based on “scant evidence” and “short, partial audio recordings,” complaining that “the overall context of how Judge Eiler communicated, and was received by litigants, is lacking in many hearings, because of gaps in the evidence.” *Resp. Br.*, p. 21. Respondent also argues that the evidence presented at trial was insufficient because it represented “a selective snapshot of her demeanor and tone,” rather than reflecting the thousands of matters over which she has presided. *Id.* at 21-22. Finally,

she asserts that her “tone and style is intended to instruct and to move cases efficiently through her courtroom,” and is properly characterized as “tough,” arguing that “some litigants will always be offended by the decision or manner that a judge conducts themselves, or communicates with them.” *Id.* at 22. These arguments are unavailing. The demeanor evidence presented at trial was more than sufficient to establish the charge against Respondent under Canon 3(A)(3). And, the suggestion that Respondent’s behavior should be excused on the grounds that it was not objectively offensive is poorly taken in light of the overwhelming evidence concerning the perception of Respondent’s conduct by pro se litigants, attorneys and clerks in her courtroom.

a. The Commissions’ Finding of Misconduct Is Supported by Clear, Cogent and Convincing Evidence.

Contrary to Respondent’s assertion, the evidence at trial was not limited to partial audio transcripts, and witness testimony established that the excerpts that were played at trial were representative of Respondent’s demeanor on the bench.

First, for some cases, recordings of entire proceedings *were* played for the Commission at trial. *See Tr.*, pp. 88, 114, 126. Second, the entire hearing recordings were entered into evidence, thereby making them available for review by the Commission, if it so wished. Hearing Exhibits

105(a)-(o). Transcripts of some of the audio recordings were also provided to the Commission. Tr., pp. 362-63. Third, because the entire recordings were entered into evidence, Respondent had every opportunity to present context for any of the excerpts played at trial if she so wished. As such, Respondent's assertion that the "context" for recordings played at trial was lacking "because of gaps in the evidence," Resp. Br., p. 21, is flatly contradicted by the record. In addition, nothing prevented Respondent from offering recordings of other proceedings. As Respondent testified, she has access to the recordings of all proceedings in her courtroom. Tr., p. 907. If she truly felt that playing entire dockets from her calendar would have placed the other recordings in their proper context, she could have done so.

Fourth, testimony from two different in-court clerks who worked with Respondent established that the excerpts of recordings played at trial were typical of Respondent's demeanor on the bench. Sandra Lampe, who had been a court clerk for 23 years, and who was an in-court clerk in Respondent's courtroom on a weekly basis for a two-year period, testified as follows after hearing an audio recording of Respondent's behavior on the bench:

Q: How does what we just heard, how does that relate to the typical demeanor that the court has?

A: That's typical.

Q: That's not an isolated incident?

A: No.

Tr., p. 163. After hearing another tape from a different matter presided over by Respondent, Ms. Lampe again testified as follows:

Q: Is the demeanor that we just heard on this tape, is that typical of the kind of demeanor that you have heard of Judge Eiler as an in-court clerk in Issaquah?

A: Very typical.

Q: Not an isolated incident.

A: No.

Tr., pp. 164-65.

Ms. Lampe's testimony was echoed by that of another in-court clerk, Alexander Luedicke, III, who, at the time of trial, had been a court clerk for over 16 years. Tr., pp. 184-85. Asked to describe Respondent's demeanor on the bench, Mr. Luedicke testified that "Judge Eiler is abrupt, rude at times, and condescending at times . . . probably half the time, 50 percent of the time." Tr., p. 186. After hearing an audio recording, Mr. Luedicke testified as follows:

Q: How frequent does this type of behavior happen in Judge Eiler's courtroom?

A: Usually with every small claims calendar.

Tr., p. 191. After hearing another recording, Mr. Luedicke further testified as follows:

Q: Is that Judge Eiler's voice on that tape?

A: Yes.

Q: As you sit here listening to it, how does that make you feel?

[Objection overruled].

A: Embarrassed.

Q: How typical is the kind of behavior we heard on that tape, in your experience?

A: Typical, most times, most hearings that occurs [*sic*].

Q: And specifically what are the things that are typical?

A: As I had stated earlier, cutting people off, not letting them finish their statements, not letting them speak sometimes, speaking what I consider rudely to them. When somebody interrupts, they are usually given what is a lecture as to the behavior that is bad and unacceptable and is done so rudely. And that is typical in most small claim hearings.

Tr., p. 193.

Finally, Respondent's attempt to excuse her behavior by characterizing it as a "selective snapshot" fails in light of prior case law. Respondent admits that evidence was presented at trial from approximately 15 different cases. Resp. Br., p. 6. However, evidence

from as little as four cases has been held to establish a pattern or practice of conduct in violation of Canon 3(A)(3). See *In re Hammermaster*, 139 Wn.2d 211, 226-229, 985 P.2d 924 (1999); see also *In re Disciplinary Proceeding Against Michels*, 150 Wn.2d. 159, 167, 75 P.3d 390 (2003) (twelve cases in a two and one-half year period constituted a pattern); *Kloepfer v. Commission on Judicial Performance*, 838 P.2d 239 252 (Cal. 1989) (ten incidents over five years reflect continuing pervasive pattern of conduct prejudicial to administration of justice).

Moreover, Respondent previously stipulated that her conduct, as exemplified in nine cases from December 2002 and December 2003, violated Canon 3(A)(3) among other provisions of the Code. Thus, in light of this history, case precedent, and particularly in light of the clerks' testimony that the type of behavior exhibited on the audio recordings was routine, typical and predictable, there should be no question that the evidence presented at trial was sufficient to establish a pattern or practice of violation of Canon 3(A)(3) by Respondent.

b. Respondent's Behavior Constituted Misconduct.

Respondent chooses to characterize her demeanor on the bench as "tough" and "no nonsense," and seeks to discredit the testimony of pro se litigants who appeared before her by arguing that "some . . . will always be offended by the decision or manner" of the judge before whom they

appear. This assertion is unsupported by citation to the transcript or to any authority. In fact, the evidence is overwhelmingly to the contrary.

The testimony of Respondent's in-court clerks is again highly probative on this issue. Ms. Lampe testified that Respondent's demeanor on the bench was intimidating, humiliating, rude and mean "pretty much all the time." Tr., p. 161. And, Mr. Luedicke testified that Respondent was rude and condescending "50 percent of the time." Tr., p. 186. In addition, a trial attorney who practiced before Respondent testified that "Judge Eiler's conduct stood out as an outlier from all the courts I've been in . . . in over 20 years of practice, and I walked out there [*sic*] shaking my head and being embarrassed." Tr., p. 418. Nor can the testimony of the individual pro se litigants who testified at trial be fairly characterized in the manner suggested by Respondent. To the contrary, they were clearly upset and shaken by Respondent's behavior toward them, not by the merits of the judge's decision, with more than one describing Respondent's demeanor as embarrassing, degrading, insulting and mocking. *See* Brief of CJC, pp. 6-7. There was thus more than sufficient evidence to support the Commission's finding that "[t]he evidence supports frequent abuse of power and position against inexperienced litigants." Commission Decision, p. 14. Even the dissenting opinion, with

which Respondent purports to agree, found a violation of Canon 3(A)(3).

Resp. Br., p. 15.<sup>1</sup>

Finally, Respondent suggests that her behavior should be excused because it is motivated by a high caseload and need for efficiency, again

citing no authority in the record or prior case law. Resp. Br., p. 22.

However, efficiency at the cost of abandoning “patient, dignified and courteous” conduct on the bench should never be tolerated, as to do so

would render the Canon hortatory at best.<sup>2</sup> “The duty to hear all

proceedings fairly and with patience is not inconsistent with the duty to

dispose promptly of the business of the court. Courts can be efficient and

businesslike while being patient and deliberate.” Comment to Canon

3(A)(3). The unacceptable cost of jettisoning proper demeanor in order to

move through a docket more efficiently was aptly testified to by one of

Respondent’s clerks, Mr. Luedicke, as follows:

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<sup>1</sup> Respondent draws the Court’s attention to the fact that the author of the dissenting opinion, Superior Court Judge John A. McCarthy, “was the only judge on the Commission panel of nine members.” Resp. Br., p. 15. The composition of the Commission is determined under the Washington State Constitution, art. IV, § 31. A case of this nature – which concerns the treatment of pro se litigants and the perception of the judiciary by the public – underscores the Constitutional wisdom of placing a majority of laypersons, as well as judges and attorneys, on the Commission.

<sup>2</sup> Respondent stated her personal belief, in testimony at trial, that the canons are, in fact, merely aspirational, as opposed to binding. Tr., pp. 489-497.

Q: With regard to efficiency, how does this kind of conduct affect the efficiency of court when Judge Eiler is handling small claims?

....

A: I think it speeds it up, because the trials are shorter, people aren't allowed to say what it is they want to say, so then the trial would be shorter in length.

Q: So at what cost is this speeding things up?

[Objection overruled].

A: I think that probably you're getting a hearing that is guided pretty much by the judge and the individuals who are involved in small claims are not allowed their day in court. They're doing what they're told to do.

Tr., pp. 194-95. Indeed, multiple witnesses testified that Respondent's behavior on the bench prevented them from being heard. *See* Br. of CJC, pp. 8-9.<sup>3</sup>

In short, while Respondent describes herself as "no nonsense," the testimony of litigants, attorneys and court personnel establishes that she sets an entirely inappropriate tone for her courtroom and is, in fact, habitually belittling, demeaning and rude to the pro se litigants who appear before her. She abuses the power of her position to mock those that come

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<sup>3</sup> It should also be noted that, although Respondent ascribes her behavior to her high caseload, her presiding judge, King County District Court Judge Barbara Linde, testified that it was her impression Respondent was happy with assignment to the civil calendar, and that Respondent's caseload was not disproportionate to that of any other judge in the district. Tr., pp. 611-12.

before the court, sarcastically dismissing their intelligence, maturity and the legitimacy of their concerns. This is the opposite of “no nonsense” behavior – this is the type of bullying that the Code directs the judiciary to avoid.

**3. Canon 3(A)(4).**

Respondent challenges the evidence of her failure to accord litigants a full right to be heard, asserting that the right to be heard is limited by the necessities of “fast-paced dockets,” and again seeks to characterize the testimony of pro se litigants as mere sour grapes. Resp. Br., pp. 20-21. As discussed in the foregoing section, Respondent’s efficiency claims do not excuse her behavior, particularly when she cites to no evidence supporting her position.

However, as it stands, Respondents’ attack on the litigants who testified at trial is likewise unsupported by the evidence. Respondent asserts that “[m]any of the witnesses did not like the resolution of their case, or otherwise resented being found to have committed a traffic infraction, or being forced to pay a fine[,]” and “[m]ost wanted a judge fully-vested in their emotional feelings about their case.” Resp. Br., p. 20. It bears repeating that these sweeping characterizations of the testimony at trial are completely unsupported by citation to the record, as is a similar

assertion, on page 6 of Respondent's Brief, that "[t]hese witnesses were unhappy with the legal outcome of their respective cases."

In fact, Respondent's assertions, as well as her case-by case summary of the evidence, Resp. Br., pp. 7-13, are at odds with the record. For instance, concerning the courtroom experience before Respondent of litigant Patricia Freeman in a small claims matter, Respondent notes simply that "[s]he lost her case," again without citation to the record. Resp. Br., p. 13. Ms. Freeman, however, testified as follows:

Q: Tell me the result of the dispute, how did she resolve the dispute?

A: She just washed it, there was no payment, so I was fine with that.

Q: So you were happy with the result?

A: Oh, absolutely, that's why I went to court with the counterclaim so that they would not win . . . and so I won.

Q: Okay. Did the result change your feelings about how you were treated during that hearing?

A: No, no, the results had nothing to do with how I was treated.

Tr., pp. 259-60.

The testimony of Elizabeth Alexandra is also directly contrary to Respondent's sweeping characterization of testifying litigants as motivated by dissatisfaction with the resolution of their cases. Following

an appearance before Respondent as a pro se litigant, Ms. Alexandra wrote a letter to the court concerning the humiliating treatment she had received. Tr., pp. 73-74. She testified that the letter was motivated solely by her treatment at the hands of Respondent, not by the result of her case:

Q (by Commissioner): The question is why did you write the letter. .

A: I wrote the letter as it says in my second sentence because I would like an apology.

Q: For what?

A: For the way I was treated, as it says, that I was belittled, humiliated, insulted in front of everyone to the point that I broke down in tears and pretty much just explained everything that had happened, that I had a horrible experience that was traumatic and that I wasn't the only one that day that was harassed and insulted.

.....

Q: What were you hoping would be the result of sending this letter?

A: The only thing I was hoping for was to get an apology, like the letter stated, and that someone would know what had happened and that I could share what had gone on in the courtroom.

Tr., pp. 79-80.

Far from acknowledging this testimony, Respondent very misleadingly asserts that the case involving Ms. Alexandra "is no longer a proper basis for any sanction against Judge Eiler," because the

Commission found that there was insufficient evidence under Count Two of the Statement of Charges (changing a court order), a charge to which only this case applied. Resp. Br., p. 8. However, the Commission also explicitly found that Respondent's "pattern of misconduct" under Count One was exhibited by evidence presented concerning Ms. Alexandra's case, among others. Commission Decision, p. 7.

As a third example, Scott Harlan, who accompanied his 16-year-old son to Respondent's courtroom on a traffic violation charge, testified that although Respondent's behavior was demeaning and offensive, he felt that "the ultimate decision seemed to be appropriate for the circumstances in my estimation." Tr., p. 114.

Respondent's summary of this case is, again, terribly misleading. She asserts that Mr. Harlan "wanted [his son] to contest the ticket, and testified that his other children had successfully contested or mitigated their tickets," and that his son "made a personal appearance in Judge Eiler's courtroom, but circumvented court rules and written instructions to do so." Resp. Br., p. 9. In fact, Mr. Harlan testified that he called the court specifically to ask whether his son could appear in person, and received permission to do so prior to appearing because, as he stated:

I wanted my son to sort of have a mini civics lesson to go through the process of appearing before a judge, having the

opportunity to state his case, see the whole process . . . just a good sort of father-son learning experience.

Tr., pp. 108-109.<sup>4</sup> As discussed in the Commission's opening brief, the experience that his son ultimately had before Respondent was quite the opposite of what Mr. Harlan had envisioned. *See* Br. of CJC, p. 10.

In short, Respondent's characterization of the litigant witnesses as motivated by unhappiness with the outcome of their cases is not only unsupported, but is directly contradicted by the evidence at trial. Rather, it appears to be motivated by an attempt to paint them in an unflattering light. For instance, Respondent makes a point of stating that Mr. Harlan's son "continues to get tickets, and learned nothing from the experience." Resp. Br., p. 10. The relevance of this statement is not apparent. To the extent it is meant as an attack on credibility, this Court "gives considerable weight to credibility determinations made by the Commission," and there is nothing in the Commission Decision to imply that Mr. Harlan, or any of the pro se litigants, lacked credibility. *In re Hammermaster*, 139 Wn.2d 211, 230, 985 P.2d 924 (1999). To the extent Respondent means to suggest that the young man deserved the treatment he received from her,

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<sup>4</sup> Mr. Harlan was prevented from explaining to the judge, because of her characteristically impatient treatment of him, that he had received permission to appear in court, and still, before this Court, Respondent restates the wrong impression that she perpetuated by refusing to listen to him. This is a telling example of how her improper demeanor detracts from the quality of her essential ability to listen and make fair determinations in court.

this statement echoes the contempt for pro se litigants Respondent displays on the bench.

The bottom line is that there is no evidence that the litigants who testified at trial resented Respondent because they “did not like the resolution of their case,” much less that “[m]ost wanted a judge fully-vested in their emotional feelings about their case.” Resp. Br., p. 20. There is, to the contrary, overwhelming evidence that Respondent treated litigants before her in a demeaning and belittling manner, and that it was this behavior, rather than her resolution of various claims, that gave rise to the charges against her.

Finally concerning Canon 3(A)(4), Respondent blithely asserts that her behavior “goes to her demeanor, and not her ability to give each litigant before her a ‘full right to be heard,’” again without citation to the record or other authority. Resp. Br., pp. 20-21. To the contrary, the Commission correctly found that, in many cases, litigants before Respondent “became frustrated to the point of abandoning their attempts at presenting evidence.” Commission Decision, p. 5. Several examples of this outcome of Respondent’s demeanor were set forth on pages 8-10 of Disciplinary Counsel’s opening brief. This evidence – completely ignored by Respondent in her response – is more than sufficient to establish a violation of Canon 3(A)(4).

**B. Respondent's Misconduct Supports a Sanction of Removal.**

As discussed in the opening brief, at a minimum, the Commission's recommendation of a suspension should be upheld. However, the evidence at trial also supports a sanction of removal. Brief of CJC, pp. 13-23. Respondent answers that suspension, and even censure, is not justified, and that, at most, Respondent should receive a reprimand. Resp. Br., pp. 23-29. Respondent supports this assertion by comparison to the conduct at issue in a number of other cases. *Id.*

Respondent fails, however, to address her prior discipline, and her repeatedly demonstrated unwillingness (or inability) to alter her conduct. As discussed in Disciplinary Counsel's opening brief, Respondent was previously disciplined for "intimidating and demeaning pro se litigants," and stipulated to an Order of Reprimand in February, 2005. Br. of CJC, pp. 3-4. However her pattern of misconduct continued unabated following this discipline, continued following initiation of disciplinary proceedings in the present matter, and even continued after an Amended Statement of Allegations was received by her. *Id.*, pp. 4-6. Respondent's suggestion that a second reprimand would be an appropriate discipline when the first reprimand utterly failed to impede her course of misconduct should be rejected out of hand. Indeed, the failure to modify improper judicial demeanor after the imposition of prior discipline has been cited as a basis

for removal. *See, e.g., In re Walsh*, 587 S.E. 2d 356 (S.C. 2003); *see also Inquiry Concerning Judge D. Ronald Hyde* (California Commission on Judicial Performance Sept. 23, 2003)<sup>5</sup> (removal is appropriate where present misconduct is similar to prior conduct for which judge was already disciplined).

In determining whether the Commission's recommendation should be adopted, or whether, under the facts of this case, Respondent should be removed from the bench, the Court should consider not only the fact of Respondent's prior discipline, but the fact that she claims to have agreed to it out of expediency, rather than out of any acceptance that her behavior on the bench required modification. As the Commission found:

The Commission is most distressed by the Respondent repeating behavior that was the subject of a previous discipline. Even more distressing is the explanation, now given by Respondent, for her agreeing to discipline in January 2005. Respondent suggests that it was an agreement of convenience.

Commission Decision, p. 16; *see also* Tr., pp. 494-95 (testimony of Respondent). This prior history calls into question whether Respondent truly is, as she claims, eager and willing to improve her behavior. Resp. Br., p. 5.

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<sup>5</sup> Available at [http://cjp.ca.gov/userfiles/file/Removals/Hyde\\_09-23-03.pdf](http://cjp.ca.gov/userfiles/file/Removals/Hyde_09-23-03.pdf)

In addition, Respondent's refusal to acknowledge the seriousness of her conduct also supports removal. This Court has previously found a judge's inability or unwillingness to recognize the seriousness of misconduct pivotal in ordering removal. *In re Anderson*, 138 Wn.2d 830, 961 P.2d 426 (1999) (discussed on page 15 of the Commission's opening brief). Respondent's failure to recognize and acknowledge wrongdoing strongly suggests that if she is allowed to continue on the bench, she will continue to treat those who come before her in court with the same degree of discourtesy and contempt. Far from disputing this point, Respondent continues to justify her abusive behavior toward pro se litigants as merely tough, no-nonsense judging. Resp. Br., pp. 3, 20, 22. Indeed, she testified that she views herself as the "vice principal" of King County District Court, South Division at Issaquah. Tr., pp. 971-72. This attitude was also displayed in her written response to the Statement of Allegations, about which she merely states that she "acknowledged the seriousness of the allegations" against her. Resp. Br., p. 5. To the contrary, Respondent stated in her letter that she believed her misconduct was "de minimus," that she was not elected to be liked, and contrasted her demeanor at length with that of an unnamed colleague, who, she claimed, habitually is unable to finish calendars on time because he will not cut off litigants. *See Ex.*

114.

Because the misconduct committed by Respondent *is* serious, because it deprives pro se litigants – i.e., those “least able to defend themselves against rude, intimidating, or incompetent judges,” *Hammermaster*, 139 Wn.2d at 233-34 – of an opportunity to be fully heard, and because it damages public perception of the judicial system and of judges, the Commission’s findings of misconduct should be upheld. Because Respondent has failed to change her behavior in response to past discipline, and because she refuses or is unable to acknowledge that her conduct violates the canons, and is serious, removal is the appropriate sanction.

**C. Abusive, Demeaning, Humiliating and Rude Conduct Toward Pro Se Litigants is not Protected Speech.**

Respondent asserts that her conduct on the bench is insulated from disciplinary action by the Commission and this Court under the First Amendment, relying heavily on *In re Sanders*, 135 Wn.2d 175, 955 P.2d 369 (1998). Rep. Br., pp. 29-30. However, *Sanders* concerned campaign or politically-related, off-the-bench speech, not in-court demeanor. Judges do not have a “right” to use abusive speech toward litigants, no more than they have a “right” to comment on the evidence, express opinions as to guilt or innocence in front of a jury, or violate any of the myriad of other rules designed to protect the fairness of the American judicial process.

More fundamentally, Respondent acknowledges that, under *Sanders*, the Commission need only find that violations of the judicial canons have been established by clear and convincing evidence. Resp. Br., p. 31. As discussed in the foregoing sections, and in the Commission's opening brief, the charges against Respondent under Canons 1, 2(A), 3(A) and 4(A) were established by overwhelming evidence at trial.

**D. Formal Complaints Were Not Required to Make Each Case Cited In The Statement of Charges Actionable.**

Respondent believes that the absence of complaints with regard to most of the matters cited in the Statement of Charges somehow calls into question whether those matters were actionable. Respondent's Brief at 7-12. This is not true.

The Commission has an independent duty to investigate allegations of judicial misconduct. Article IV of the state constitution, the provision creating the Commission, provides in relevant part:

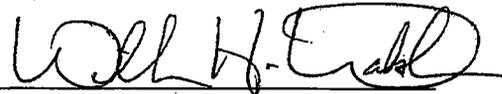
Whenever the commission receives a complaint against a judge or justice, *or otherwise has reason to believe that a judge or justice should be admonished, reprimanded, censured, suspended, removed, or retired*, the commission shall first investigate the complaint or belief and then conduct initial proceedings for the purpose of determining whether probable cause exists for conducting a public hearing or hearings to deal with the complaint or belief.

Washington Constitution, article IV, § 31. That duty to investigate all allegations of judicial misconduct is not dependent on a complainant choosing to "press charges" nor is anything in the rules or state law and regulations governing the Commission's activities which suggest that a complainant's decision to withdraw a complaint denies the Commission of jurisdiction to fulfill its independent duty to investigate and sanction misconduct.

## II. CONCLUSION

For all the foregoing reasons, this Court should either uphold the Commissions' recommendation of a significant period of suspension, or order Respondent's removal from the bench.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of September,  
2009.



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**DECLARATION OF SERVICE**

BY RONALD R. CARPENTER

  
CLERK

The undersigned declares as follows:

1. I am employed at the Corr Cronin Michelson Baumgardner & Preece LLP, law firm of Disciplinary Counsel, William H. Walsh.

2. On September 21, 2009, I caused a true and correct copy of the foregoing document to be served on the attorney of record for Respondent herein by the method indicated to the following:

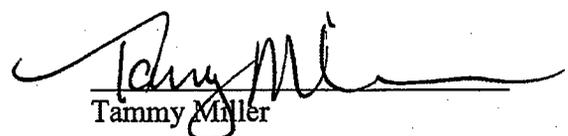
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Seattle, WA 98101-1374  
*Via Hand Delivery*

3. Additionally on this day, I caused a true and correct copy of the foregoing document to be served on the Commission on Judicial Conduct by the method indicated:

Ms. Judy Curler  
Commission on Judicial Conduct  
State of Washington  
P.O. Box 1817  
Olympia, WA 98507  
*Via E-Mail*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 21<sup>st</sup> day of September, 2009 at Seattle,  
Washington.

  
Tammy Miller