

SEP 06 2024

**COMMISSION ON JUDICIAL CONDUCT**

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

In Re the Matter of

CJC NO. 10717-F-209

The Honorable Samuel P. Swanberg  
Judge of the Benton & Franklin Counties  
Superior Court

**COMMISSION DECISION  
AND ORDER**

Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

Code of Judicial Conduct – Preamble, Par. 2.

**I. INTRODUCTION**

This matter came before a panel of the Commission on Judicial Conduct for a hearing on May 20, 2024, based on the Commission on Judicial Conduct’s Statement of Charges alleging that Judge Samuel Swanberg (Respondent) violated Canon 1, Rules 1.1, 1.2, and 1.3, of the Code of Judicial Conduct. Participating in the hearing were Presiding Officer Judge Kristian Hedine and Commission Members Robert Alsdorf, Steven James, Janet Katz, Mustafa Mohamedali, Marsha Moody, Lindsey Trakel<sup>1</sup>, and Erin Williams. Attorney Terence Scanlan served as Disciplinary Counsel and Attorney Scott Johnson was Counsel for Respondent.

<sup>1</sup> For reasons unrelated to this proceeding, Ms. Trakel resigned her position with the Commission prior to the completion of this decision.

1 **II. CHARGES**

2 Respondent was charged with violating the Code of Judicial Conduct as follows:

3 Violating Canon 1, Rules 1.1 and 1.2

4 A. “[B]y engaging in a systemic pattern of domestic violence against S.B., his former  
5 spouse; that said abuse occurred over many years and involved repeated acts of  
6 physical, emotional, and mental abuse and multiple types of assault;” and

7 B. “[B]y engaging in harassing behavior after his romantic relationship with a woman,  
8 S.S., had been terminated by S.S. Respondent engaged in repeated attempts to  
9 contact her and resume the relationship, despite her repeated and unambiguous  
10 requests to be left alone and for him to stop contacting her;” and

11 Violating Canon 1, Rules 1.1, 1.2, and 1.3

12 C. “[B]y abusing his power and role as a judicial officer to obtain improper access to  
13 the Benton County Office of Public Defense’s office under a fabricated pretext when  
14 pursuing S.S. against her express wishes after she left court employment to work at  
15 the Office of Public Defense”.<sup>2</sup>

16 **III. HEARING**

17 After Disciplinary Counsel issued Respondent a CR 43(f) Notice to Appear for the fact-  
18 finding hearing as a witness, Respondent sought a protective order striking the Notice, and when  
19 that was denied by the Presiding Officer, sought a stay from the Presiding Officer of the Presiding  
20 Officer’s own order denying Respondent’s request, which was also denied. Prior to the hearing,  
21 which was set to begin on Monday, May 20, 2024, Respondent resigned from his judicial  
22 position effective Friday, May 17, 2024. He also made a series of public statements through  
23 counsel, as well as communications to Mr. Scanlan and the Presiding Officer, that he would not

24 <sup>2</sup> Rule 1.1 - Compliance with the Law. A judge shall comply with the law\*, including the Code of Judicial  
25 Conduct.

26 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 1.3 - Avoiding Abuse of the Prestige of Judicial Office. A judge shall not abuse the prestige of  
judicial office to advance the personal or economic interests\* of the judge or others, or allow others to do so.

(Note: asterisks from original noting terms included in Terminology Section of the Code.)

1 participate in the fact-finding hearing. Mr. Johnson referred to the process as “unfair” and a  
2 “scam.” He persisted in making similar statements after the conclusion of the hearing.

3 All participants appeared personally for the hearing. Mr. Scanlan presented opening  
4 statements and closing arguments. Mr. Johnson again stated that he and his client declined to  
5 participate but reserved the right to object in order to invoke Respondent’s Fifth Amendment  
6 rights. Mr. Scanlan presented evidence, beginning by calling Respondent who testified under  
7 oath. Following his testimony, Respondent and his counsel exited the courthouse and did not  
8 return for the remainder of the hearing.

#### 9 IV. FINDINGS OF FACT

10 1. Respondent was a Superior Court Judge for Benton and Franklin Counties. He  
11 served as a judge of the Benton and Franklin Counties Superior Court since October 2, 2017.  
12 He retired effective May 17, 2024. At the time of the hearing, Respondent was retired.<sup>3</sup>

13 2. On January 4, 2022, the Commission received a self-reported complaint from  
14 Respondent identifying that he was the subject of an Anti-Harassment Protection Order  
15 proceeding involving a former court employee, S.S., with whom Respondent had previously  
16 been in a romantic relationship. That proceeding resulted in the issuance of a one-year protection  
17 order against Respondent. Benton County Superior Court Cause No. 21-2-01702-03.

18 3. When requested to assist S.S. in obtaining an Anti-Harassment Protection Order,  
19 Respondent’s former spouse, S.B., filed a sworn declaration which detailed a decades-long  
20 pattern of ongoing physical and emotional abuse perpetuated against her by Respondent.

21  
22  
23 <sup>3</sup> The Washington State Constitutional provision creating the Commission on Judicial Conduct, Art. IV,  
24 Par. 10, directs the Commission to create its rules of procedure. Under those rules, CJCRP 2(b) Jurisdiction,  
25 provides: “Former judges. The commission has continuing jurisdiction over former judges regarding allegations  
26 of misconduct occurring prior to or during service as a judge.” Consistently, the constitutional provision’s enabling  
statutes include RCW 2.64.057: “Investigation of conduct occurring prior to, on, or after December 4, 1980 [date  
of the Commission’s creation]. The commission is authorized to investigate and consider for probative value any  
conduct that may have occurred prior to, on, or after December 4, 1980, **by a person who was, or is now, a judge  
or justice** when such conduct relates to a complaint filed with the commission against the same judge or justice.”  
(Emphasis added.)

1 I was contacted to see if I would be willing to provide a declaration  
2 supporting this action. While I have kept my traumatic experiences  
3 private for decades, I agreed to making the following incidents public  
4 in an attempt to support Ms. S[redacted] and other women who are  
5 walking (or have walked) a similar path. The courage displayed by Ms.  
6 S[redacted] under such a power disparity is inspiring.

7 (Exhibit 229, Declaration of S.B. in support of S.S. Petition for Anti-  
8 harassment order.)

9 S.B. also testified she had not previously publicly disclosed Respondent's abuse of her,  
10 and wrote her declaration only out of concern for the safety of S.S., a woman who was the sole  
11 caretaker of a young child.

12 As the local community became aware of the Anti-Harassment Order Petition and S.B.'s  
13 declaration in that public court file, Respondent was investigated by law enforcement for alleged  
14 domestic violence against his former spouse, S.B., as described in her declaration. In January  
15 2022, Respondent was charged with two counts of Assault Fourth Degree (domestic violence)  
16 in Benton County District Court, for allegedly assaulting his former spouse on two different  
17 dates in February 2021 - the potentially criminal incidents in the declaration that were within the  
18 statute of limitations. Following a jury trial, Respondent testified he had never been the  
19 aggressor toward S.B. and had only defended himself. He was acquitted of the criminal charges  
20 with a special finding that he had acted in self-defense.

#### 21 **Respondent's Abuse of S.B.**

22 4. Respondent was married to S.B. from August 1987 to April 2021. The testimony  
23 and evidence presented during the hearing established that during their marriage, both before  
24 Respondent was a judge and after he became a judge, Respondent committed numerous acts of  
25 abuse against S.B., including, but not limited to, repeated acts of physical violence against her.  
26 S.B. and Respondent met when S.B. was 15. They did not date until she was 16, as she and her  
family are devout members of the Church of Jesus Christ of Latter-day Saints. Respondent is  
two years older than S.B. They married in 1987, and S.B. forewent her plans to attend college  
because she was pregnant. Respondent was verbally abusive and occasionally pushed S.B., who

1 considered leaving the marriage. She did leave Respondent after he physically assaulted her  
2 early in their marriage. They were living in Provo, Utah and Respondent was attending law  
3 school at Brigham Young University. S.B. was staying at home with their then two-year-old  
4 child. Respondent regularly left home at six in the morning in the only car and returned around  
5 eleven at night, leaving S.B. without transportation. She lacked the means to buy necessary  
6 items such as groceries. She requested Respondent let her drive him to and from school so she  
7 could use the car and he became enraged and called her a name, as was typical for him. She  
8 described they were in a hallway and Respondent pushed her up against a wall, then threw her  
9 against a wall where a bicycle was located which resulted in a scratch on her face and injury to  
10 her head and back from striking the pedal. From the stand, she pointed to where there had been  
11 a painful bruise on her back and scratches on her face. The night of that assault, S.B. packed  
12 items in two garbage bags and fled, without any funds, taking her young child and driving all  
13 night to return to her parent's home in Mountlake Terrace, Washington where she remained for  
14 over one year. During that time, Respondent remained in Provo.

15         5.         After praying together, S.B.'s father offered to help her by paying for an attorney  
16 to consult with S.B. to see about filing for a dissolution of her marriage. While she was away  
17 from Provo, the Respondent threatened S.B. with losing custody of their child and had his own  
18 mother contact S.B. to attempt to get her to return to Respondent.

19         She testified that Respondent was very angry, made accusations of infidelity against her,  
20 and had his mother pressure S.B. to reconcile with him. S.B. testified Respondent went to  
21 Washington to see their son and brought her flowers and a journal, showing her passages he had  
22 written, including an appeal: "Dear God, help S. understand how confused she is." He used  
23 specific language that is important as articles of faith in the LDS Church, which he had joined at  
24 S.B.'s behest. He took her to a nice restaurant, and bought her clothes and jewelry, including an  
25 engagement ring, which he had not done before the marriage. He showed up unannounced with  
26 gifts at the shop where she worked at the Alderwood Mall. Ultimately, S.B. chose to return to

1 Respondent because of her hope that the marriage would succeed and because of her religious  
2 faith, which discouraged divorce and recognized marriage as a sacred institution.

3         6.         S.B. continued to be married to Respondent and they had five more children  
4 together. The testimony and evidence established that during the subsequent years of their  
5 marriage, Respondent engaged in physical violence and emotional intimidation against S.B. over  
6 one hundred times, averaging three or four times per year. Two of their daughters witnessed  
7 incidents of violence between S.B. and Respondent, where Respondent had thrown or forced  
8 S.B. to the floor and then pinned her on the floor, while screaming at her in anger and calling her  
9 names. The daughters also observed that S.B. had, on occasion, slapped or struck Respondent.  
10 Both of the daughters saw Respondent become angry and upset with S.B. on numerous  
11 occasions. When asked, neither of them described Respondent as acting in self-defense.

12         7.         Both Respondent and S.B., particularly S.B., testified they tried not to expose the  
13 children to their open conflict. S.B. said there were times her own conduct was less than ideal,  
14 and that she slapped him, too. She volunteered that Respondent was “sometimes good,” and that  
15 he could be “kind, generous, loving and supportive,” and that she “saw the good in him.”

16         Many times, S.B. saw Respondent in a state of rage against her. Over the course of their  
17 entire relationship, Respondent had a problem controlling his rage. At the request of Disciplinary  
18 Counsel, S.B. demonstrated how Respondent would typically roughly grab her by the arms,  
19 rapidly strong-arm her to the floor and then pin her there “like a wrestler.” S.B. also described  
20 Respondent slapping her, kicking her, and throwing her violently across the room, often causing  
21 bruising when she struck the floor or other objects. At one point early in the marriage, S.B. told  
22 him if he hit her again, she would leave him. After that, though he would slap or push her, or  
23 pin her down, he did not strike her again with a closed fist, describing that he “got [me] under  
24 control,” or “held [me] tight.” When asked by counsel, S.B. acknowledged that Respondent is  
25 much physically stronger than she. She described he would most commonly put his hands on  
26 her, force her to the ground, and pin her like a wrestler; that he often grabbed her arms and

1 clothes and also hit her, though not often. She described the hits as a closed fist on the side of  
2 her head or with an open hand.

3 She described once confronting him in the kitchen when she was worried about money  
4 and he had bought himself an expensive watch. He “got extremely angry very quickly,” called  
5 her a name, whereupon she slapped him, and he put her on the tiled kitchen floor, giving her a  
6 “goose egg” on her head. In answer to Disciplinary Counsel’s question, she said his violence  
7 toward her was not in self-defense, and that he would bring her to the floor in a rage when she  
8 verbally confronted him about some aspect of their relationship. She said this happened “many,  
9 many times.” She testified that he was asserting control, and “shutting [her] up.”

10 8. Respondent’s physical and emotional abuse of S.B. continued after Respondent  
11 became a judge. S.B. testified she was “really excited” when he became a judge, hoping the  
12 change in status would improve their relationship, but his abusive behavior actually escalated.  
13 She testified that the relationship worsened from 2018 - 2019, with many arguments; that  
14 Respondent stayed late at work and was gone on weekends without explanation to the family.  
15 In late summer of 2020, S.B. found a condom in Respondent’s wallet. She had previously  
16 suffered from uterine cancer and was no longer able to bear children, so the discovery of the  
17 condom was very upsetting to her.

18 S.B. testified that in early 2020, Respondent proposed they go on a trip to Mexico to  
19 reconcile and improve their relationship. She agreed to go to Portland “for a couple days.” On  
20 that trip, S.B. told Respondent “I’m all in [for the marriage],” and that she would agree to stay  
21 with him and she did not mind if he left the church. She said she would stay with him, give him  
22 unconditional love, and keep their family intact.

23 By fall of 2020, she described conditions in the marriage as “really bad.” Respondent  
24 was living in the home but there was one weekend when no one in the family saw him. He had  
25 absented himself without communicating, not coming to family dinner, and not going to church.  
26 S.B. proceeded to locate Respondent, who at that time was in their garage working out with his

1 shirt off in front of a mirror. She then noticed that Respondent had gotten a full sleeve tattoo  
2 without her knowledge or approval, and confronted him about it. S.B. was further upset that he  
3 had purchased a “muscle car” that was in the garage when the family was on limited means.  
4 Respondent became angry with her and urged her to slap or strike him, which she did. She also  
5 broke the mirror he was working out in front of. She described regret and disappointment in  
6 herself for being provoked to the point that she did not live up to her own values. Her demeanor  
7 while testifying was earnest and sad, particularly when admitting there were occasions she had  
8 slapped or yelled at Respondent. She acknowledged and evidenced shame at her own poor  
9 conduct, and testified that there were good times in the marriage and that she believes there is “a  
10 good side to him.” They finally divorced in the fall of 2021, though according to S.B.’s  
11 declaration under oath, Respondent insisted on writing up all paperwork, gave her three hours to  
12 review it, and threatened that if she sought advice from a lawyer he would “f\*\*k me up for the  
13 rest of my life.” She also testified at the hearing that she told him several times during the  
14 marriage she wished to leave, whereupon he would say she had to tell their children; and/or that  
15 he would kill himself; or he would radically change his behavior and woo her with gifts and  
16 expensive dinners.

17 9. The final incident of violence between Respondent and S.B. occurred on  
18 February 8, 2021. S.B. had just returned to the family home in the Tri-Cities after taking a horse,  
19 that they could no longer afford, back to Idaho. When she arrived home, she discovered that  
20 certain personal possessions were missing. At that time, Respondent and S.B. were living in  
21 separate quarters in the family home and S.B. entered Respondent’s room to see if she could  
22 locate the missing items. She had her cell phone camera to document what was missing.  
23 Respondent told her to get out of his room and when she refused, he pushed her to the floor, and  
24 then grabbed her and dragged her by her feet out of the room. S.B. had her cell phone in her  
25 hand and took photos of the Respondent as he was dragging her by her feet. S.B. incurred a  
26 bruise as a result of that assault. She texted a photo of that bruise to one or more of her sisters



1 with the following message: “And this is a picture of the last bruise he will ever give me. I got  
2 this bruise when he shoved me across the room to ‘shut me up’. A normal occurrence. A pattern  
3 since the very beginning. I blamed myself for all of it.” S.B. took photographs of some of the  
4 bruises she received from Respondent which were admitted as evidence in the Commission’s  
5 hearing.

6 S.B. testified that eight months after the dissolution, she was asked to write an affidavit  
7 about Respondent’s abusive conduct toward S.B., in support of S.S.’s petition for an order. S.B.  
8 testified at the Commission hearing that she was ashamed that her initial feeling was one of  
9 relief, because it meant that S.B. “wasn’t crazy” as Respondent described her. S.B. was also  
10 concerned for S.S., who had a young child, and was considerably younger than Respondent. S.B.  
11 had never made a public statement about the abuse she experienced in the marriage but testified  
12 the pattern S.S. was experiencing from Respondent fit a familiar pattern to her own experience,  
13 and that S.B. felt compelled to help protect S.S. and her child.

14 Disciplinary Counsel asked S.B. what she had to gain from providing a statement in  
15 support of S.S., and she responded “nothing.” The declaration she provided for S.S. was written  
16 eight months after the separation from Respondent and did not help her in any way regarding the  
17 dissolution.<sup>4</sup> S.B. is employed as a state representative and believes her statement and her  
18 testimony at this proceeding would likely be damaging to her by appearing “weak” and  
19 “emotional.” Her demeanor during her testimony was stressed and drawn and it was plain that  
20 publicly describing these matters was emotionally painful. She caught her breath and at times  
21 was near tears. Panelists found her testimony to be very credible.

22 10. Disciplinary Counsel presented testimony from two of S.B. and Respondent’s  
23 daughters. They were stressed and shaky, occasionally pausing, but responded openly to  
24 questions. The younger daughter, aged 19, testified she had seen both her parents shove the  
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26 <sup>4</sup> S.B.’s declaration in support of S.S. describes how she accepted the dissolution paperwork drafted by  
Respondent, and that he threatened to “f\*\*k her up” if she consulted with a lawyer. Multiple exhibits were offered  
by Disciplinary Counsel and admitted without objection. They were helpful to the panel in reaching its conclusions.

1 other. When asked by counsel if her father was truthful if he said he was acting in self-defense,  
2 the younger daughter testified that would not be truthful. She stated her mother's version of the  
3 altercations was truthful. The elder of the two daughters testified that her mother had on occasion  
4 slapped or pushed her father, but that the father did "lots" of pushing/shoving her mother to the  
5 floor, roughly, and "pinned [her] down pretty fast," with "all fours on top of her." She described  
6 Respondent as pinning her mother down and screaming at her and that his tone of voice was loud  
7 and very aggressive. She testified that her father did not appear to be acting to protect himself  
8 from her mother. The elder daughter noted that she did not always see the beginning of the  
9 incidents.

#### 10 **Respondent's Harassment of S.S. and Abuse of the Prestige of Judicial Office**

11 11. The dissolution of Respondent and S.B.'s marriage was finalized in April of 2021.  
12 In June 2021, the Respondent began a dating relationship with S.S., then employed in the  
13 Franklin County Clerk's Office. S.S. was a 25-year-old single mother, and sole supporter of her  
14 young son when she began her relationship with Respondent. She told Respondent that she was  
15 concerned that knowledge of their relationship might jeopardize her job, which she desperately  
16 needed. She testified that Respondent was "very inconsistent," in that he would be with her and  
17 then "disappear," and "always...[play] mind games."

18 12. S.S. terminated the relationship with Respondent in November of 2021, after she  
19 had been forced to resign or be fired from her position in the Franklin County Clerk's Office as  
20 a direct result of Respondent posting a photograph on social media of himself and S.S. attending  
21 a Washington State University football game, without S.S.'s knowledge or approval.  
22 Respondent did nothing to assist or defend S.S. in the loss of her job, which he knew was due to  
23 his relationship with her. S.S. immediately sought another job and was able to find one, albeit  
24 with lower pay, at the Office of Public Defense (OPD) for Benton County as an administrative  
25 assistant. Prior to taking the job she was determined to break off the relationship with  
26

1 Respondent so that she would not jeopardize her new employment, and because of the way that  
2 Respondent treated her.

3           13. Respondent refused to accept that his relationship with S.S. was over and instead  
4 persisted in a steady campaign of harassing behavior of S.S. for approximately five weeks.  
5 During that time, Respondent refused to stop contacting S.S. through various platforms in a  
6 barrage of communications including text messages, phone calls, emails, a written letter, and  
7 also through third party contacts by his mother and one of his daughters to whom Respondent  
8 gave S.S.'s phone number, without her permission. Respondent also made unexpected and  
9 uninvited visits to S.S.'s home. Respondent offered \$1000 to a friend of S.S. to try to mediate  
10 or bring S.S. back to Respondent. S.S. felt harassed by these unwanted ongoing direct and third-  
11 party contacts. S.S. repeatedly and unambiguously requested that Respondent leave her alone  
12 and stop contacting her, which would often immediately be followed by further emails, texts,  
13 calls, and visits by Respondent. On December 7, 2021, immediately after S.S. again told  
14 Respondent their relationship was over, he wrote her an extended letter in the form of a  
15 contract/marriage proposal, offering to meet her emotional, financial, and other needs (Exhibits  
16 206, 207). Respondent's letter to S.S. was remarkably similar to a letter admitted into evidence  
17 that Respondent wrote to S.B. (Exhibit 204), dated August 23, 2021, four months after his  
18 divorce from S.B. and during his relationship with S.S. In both, he excoriated himself for failing  
19 each woman, professed his undying love to each of them as "the love of [his] life", and promised  
20 them everything that he had failed to provide them before, if only they would return to him.  
21 During the time Respondent was pursuing S.S. to resume their relationship, he fainted during a  
22 court day – later telling her he was suffering so badly from her rejection that he could neither eat  
23 nor sleep and was not certain he wished to go on living.

24           14. Respondent's harassment of S.S. culminated on December 21, 2021, when he  
25 unexpectedly confronted her in the parking lot of the Benton County Office of Public Defense  
26 as she was arriving for work shortly before 8 a.m. S.S. was startled, disturbed, and intimidated

1 by Respondent's surprise appearance. She attempted to placate him by telling him that she would  
2 meet him at the end of the day, after work.

3 15. Instead of waiting until the end of the day, Respondent telephoned S.S. at her  
4 work desk from his chambers, which prompted her to disclose to the attorneys in the Office of  
5 Public Defense that Respondent was stalking her and would not leave her alone.

6 16. Respondent then proceeded to go to the Office of Public Defense and three times  
7 attempted to open the door to the office from the public hallway, using his Benton County  
8 employee key card on the security pad. When his efforts to enter the office were not successful,  
9 an employee of the Office of Public Defense testified she recognized him as a judge and opened  
10 the door for him. He then claimed that he was there to deliver a Christmas card and a gift to the  
11 office. Respondent then inquired about "the new girl." Respondent admitted during his  
12 testimony that this was a pretext for his real reason, which was to attempt to locate and contact  
13 S.S. Another attorney in the OPD testified S.S. was concerned and trying to hide from  
14 Respondent. It was clear to her that Respondent was looking for S.S. OPD employees plainly  
15 saw that S.S. was frightened, and they contacted law enforcement which investigated the  
16 harassment of S.S. Detective Sergeant Carlos Trevino, then with Benton County, investigated  
17 and interviewed Respondent, who falsely stated to law enforcement that he was at the OPD office  
18 to give gifts. Respondent never before or since offered gifts or cards to either the OPD office  
19 nor the office of the prosecutor. The Office of Public Defense's then Director, Eric Hsu, testified  
20 consistently with S.S.'s account of this incident. He confirmed the office would not be open to  
21 the general public, nor was there an expectation that judges would be there, and that sensitive  
22 client information could have been exposed to view that would be inappropriate for a judge to  
23 see. Multiple exhibits corroborating S.S.'s testimony and that of the OPD staff and the detective  
24 were admitted into evidence at this hearing.

25 S.S.'s demeanor on the stand was stressed and sad, and she occasionally paused for long  
26 periods to collect herself. The panel found her testimony highly credible.

1 17. S.S. then filed her Petition for an Order for Protection against Respondent on  
2 December 22, 2021, in Benton County Superior Court. As noted earlier, S.B. prepared a  
3 declaration in support of that petition. The Benton County Superior Court issued the Order for  
4 Protection to S.S. against Respondent for one year, subject to renewal as provided by statute.  
5 The file was public record and law enforcement issued charges against Respondent for the  
6 potential Domestic Violence charges within the statute of limitations.

### 7 **Respondent's Testimony**

8 18. Respondent testified under oath when called by Disciplinary Counsel, though the  
9 majority of his testimony was truncated by his lawyer's assertion of Respondent's Fifth  
10 Amendment Rights. Respondent testified, whenever asked, that his deposition and prior  
11 statements accurately reflected what he had said and testified to under oath previously.  
12 Disciplinary Counsel inquired whether Respondent was familiar with the Code of Judicial  
13 Conduct. Respondent testified he had "read through the Code briefly," but that he had chiefly  
14 focused on Canon 4 and the provisions relevant to running for judicial office as he undertook his  
15 campaign to attain his office. In response to questions, Respondent affirmed that he had testified  
16 under oath on some of the facts at issue here in the criminal case; that he had made a prior  
17 statement to a Benton County Sheriff's Detective; made a voluntary statement to the  
18 Commission on Judicial Conduct; and was deposed by Disciplinary Counsel under oath.  
19 Respondent further affirmed he knew that making false statements to a detective could be  
20 charged as the criminal offense of Obstructing Law Enforcement, and that making a false  
21 statement under oath could be charged as the crime of Perjury or Making False Statements.

22 Respondent has provided statements concerning his behavior regarding S.B. to the  
23 Benton County Sheriff's Office and in his written submission to the Commission. He has also  
24 testified under oath at his trial on the Fourth Degree Assault charges as well as in a deposition in  
25 this matter conducted by Disciplinary Counsel. The Respondent also testified under oath during  
26 the hearing of this matter as a witness called by Disciplinary Counsel. Throughout his testimony,

1 including his testimony at the hearing, Respondent has asserted and maintained that he has never  
2 committed any act of physical violence or emotional abuse against S.B., except when he was  
3 forced to act in self-defense, calmly, and never using more force than necessary. Respondent  
4 has continually asserted that he was a victim of S.B.

5 19. While a party/witness in a civil case may invoke their Fifth Amendment right  
6 against self-incrimination to decline to answer questions, the trier of fact in a civil case may  
7 choose to draw a negative inference from the assertion of the right to remain silent. Here,  
8 Respondent chose not to present a case and testified only as a witness called by Disciplinary  
9 Counsel. He acknowledged he could face peril of being charged with Perjury, Obstructing Law  
10 Enforcement, and False Swearing. At the time of the Commission's hearing, Respondent had  
11 already been tried and acquitted of the domestic violence criminal charges against S.B. that were  
12 within the statute of limitations, and double jeopardy prevents the State from charging him again.  
13 It is appropriate to conclude Respondent was chiefly concerned with the possibility of being  
14 charged with criminal charges associated with lying to law enforcement and lying under oath.  
15 In a civil case such as this, however, the State may not meet its evidentiary burden based solely  
16 on an assertion of the right to remain silent. (*In re Dependency of A.M.F.*, 1 Wn.3d 407, 416,  
17 526 P.3d 32 (2023)).

18 In addition to the negative inference drawn from Respondent's invocation of the Fifth  
19 Amendment, Respondent's testimony was not credible and was not supported by the otherwise  
20 uncontroverted testimony and evidence presented during the hearing in this matter. Instead, that  
21 testimony and evidence clearly established that Respondent engaged in a systematic pattern of  
22 domestic violence and emotional abuse against S.B. and that such violence and abuse started  
23 early in their marriage and continued throughout the duration of their marriage, including the  
24 time Respondent was on the bench.

25 20. Respondent testified that he perceived that S.B. decided to provide a statement in  
26 support of S.S. because she "thought it was a perfect time" for S.B. "strategically" because of

1 the “problems” Respondent was experiencing with S.S., and that rather than being motivated by  
2 concern for S.S., S.B. saw “an opportunity.”

3 Respondent explained that though he was dating S.S. at the time, he wrote his letter to  
4 S.B. begging forgiveness, accepting responsibility for all problems in their relationship, and  
5 calling her the “love of [his] life” because he was “lonely,” and it was “cathartic.” In his similar  
6 letter to S.S., he offered to hide their relationship from others at Benton County if she acceded  
7 to his “contractual” terms to resume that relationship.

8 Respondent testified he was aware that S.S. was a single mother and the sole provider for  
9 her young son, and that his relationship with her cost her her job at Franklin County. He testified  
10 that during November – December 2021 he was sobbing, severely depressed, and obsessing over  
11 the loss of the relationship. Despite being deeply depressed, using psychoactive medication, and  
12 reaching a state of health necessitating intravenous hydration, Respondent testified that he did  
13 not notify his presiding judge nor any parties before him of his compromised ability to perform.

14 Respondent admitted, under oath at the hearing, that he did not go to the Office of Public  
15 Defense to provide a card and presents, even though that was how he explained himself to law  
16 enforcement. He testified that was in fact a “pretext.”

17 Disciplinary Counsel asked Respondent if, after S.S. obtained the order against him, (and  
18 in Respondent’s words the end of the relationship was “pounded into” him), Respondent was  
19 retaliating against S.S. when Respondent disclosed his (now ended) relationship with S.S. to the  
20 office of the Prosecuting Attorney. Respondent answered that at that time he simply “wanted to  
21 disclose.” He denied that he was retaliating against S.S., even though his post-relationship  
22 disclosure could reasonably be viewed as retaliatory and an inappropriate use of his position.

23 21. Finally, Respondent testified, in response to questioning, that there is no legal  
24 impediment preventing him from running again for judicial office, though he also stated he did  
25 not intend to do so.

26

1           22.     In contrast to the other witnesses, Respondent’s demeanor and the substance of  
2 his testimony were not credible. His explanations were illogical and inconsistent, such as his  
3 justification for disclosing his prior relationship to the prosecutor’s office only after S.S. made  
4 it clear that she would not accept him back. Shortly prior to that time, when he was barraging  
5 her with attempts to regain his power over her, he had promised to hide that same relationship if  
6 she agreed to his terms. His demeanor contrasted sharply with the sober and often sorrowful  
7 testimony of those who had been close to him. Only when the overwhelming evidence made it  
8 impossible to explain away his duplicity, i.e. his deceptive scheme for pursuing S.S. into the  
9 Office of Public Defense, did he admit that he had engaged in a “pretext.” His explanations and  
10 description of his conduct were consistent with a person who is both physically and emotionally  
11 narcissistic and focused solely on their own needs and wants at the expense of others whom he  
12 professes to love, including the women in his life and his own children.

13           23.     As his final witness, Disciplinary Counsel presented testimony from an expert on  
14 domestic violence, Margaret Hobart, PhD. Dr. Hobart also issued a written report (Ex. 237). In  
15 formulating her report and preparing for her testimony, Dr. Hobart reviewed numerous  
16 documents which are listed in Attachment A to her report and she also interviewed S.B. She  
17 opined that S.B.’s account of abuse by Respondent is consistent with common or typical patterns  
18 of behavior encountered in relationships where domestic violence (DV) occurs. It is common in  
19 DV situations for abuse to last for years and even for decades, and never to be reported to law  
20 enforcement. It is also common for the abuse to be intermittent with other times of “normal”  
21 behavior. It is common for abuse victims to experience periods of time where the abuser behaves  
22 appropriately and is even overly solicitous of the victim. Dr. Hobart opined that each of these  
23 dynamics appears to have existed in the relationship between S.B. and Respondent.

24           According to Dr. Hobart, no woman has much to gain from raising issues of domestic  
25 violence. DV victims are still often stigmatized in the courts and communities. DV victims are  
26 routinely met with suspicion and are accused of being vengeful. They are often also accused of



1 trying to gain some financial advantage or seeking attention. “Even when abuse is  
2 acknowledged, all their decisions regarding trying to make a relationship work, or ensure  
3 stability for their children are questioned. The impact of the abuse, their levels of trauma and  
4 ongoing fear are trivialized. Most women find no advantage to being identified as a survivor of  
5 domestic violence, and thus most avoid it.” (Ex. 237, p. 4).

6 In this case, S.B. did not disclose the abuse she experienced until she became aware of  
7 Respondent’s harassment and stalking behavior towards S.S. At that point, S.B. felt compelled  
8 to offer a written declaration in support of S.S.’s petition for a protective order.

9 In her report, Dr. Hobart notes that S.B. admitted that she had occasionally hit or slapped  
10 Respondent. S.B. did not attempt to minimize or excuse her behavior. Dr. Hobart also noted  
11 that such conduct by S.B. is in alignment with the experience of many other victims or survivors  
12 of DV. (Although Dr. Hobart offered her opinion on S.B.’s specific credibility, witness  
13 credibility assessment is the province of the panel, which did not rely on the expert’s opinion on  
14 S.B.’s credibility.)

15 Dr. Hobart also discussed the fact that abuse in relationships is not always confined to  
16 physical abuse. Abusive partners may use multiple tactics to create and enforce power and  
17 control in their relationships. These include emotional abuse, sexual abuse, financial  
18 exploitation or control, using the children, sabotaging goals, enforcing isolation, and leveraging  
19 institutions. The term “coercive control” has been applied to this other sort of abuse. That term  
20 “...emphasizes the coercive power abusive intimate partners may hold over their partners, not  
21 just through violence, but through a variety of means, including manipulation, emotional abuse,  
22 gaslighting, isolation, instilling fear, and exploiting gender roles and systemic biases.” (Ex. 237,  
23 p. 5).

24 Dr. Hobart also pointed out that: “In relationships in which intimate partner violence and  
25 coercive control takes place, violence is intermittently present and one person in a relationship  
26 generally has greater freedom, decision-making power, control over resources, and say in ‘how

1 things go' than the other. Meanwhile, the other person operates from a place of fear, dread,  
2 limitation, appeasement and, often, attempted compliance in order to avoid conflict.” (Ex. 237,  
3 p. 6).

4 Another hallmark of an abusive relationship is behavior which is referred to as “love  
5 bombing”. It is a way for an abuser to get and keep their partners in relationships in spite of their  
6 unacceptable behavior. It is a form of manipulation which is common in abusive intimate  
7 relationships. As Dr. Hobart explains further, love bombing overwhelms the target with  
8 appreciation, praise, flattery, promises, apologies, and preys on the victim’s vulnerability and  
9 sincerity in loving the abuser. Love bombing is often an important strategy for pulling in a  
10 potential partner and pushing for commitment.

11 The Respondent’s behavior as described in both the testimony of S.B. and of S.S.,  
12 together with the testimony of the other witnesses, including two of his daughters, and the myriad  
13 of exhibits in this case, clearly demonstrate that he was engaging in violent and emotionally  
14 abusive behavior over the years and even decades of his marriage to S.B. and that he was  
15 embarking on additional domestic violence behavior toward S.S. However, due to S.S.’s  
16 unequivocal termination of their relationship, he was thwarted from being able to advance to the  
17 later stages of domestic violence with S.S.

## 18 19 **V. CONCLUSIONS OF LAW**

20 Based on the foregoing Findings of Fact, the Commission concludes that it has proven  
21 by clear, cogent and convincing evidence that Judge Swanberg has violated the Code of Judicial  
22 Conduct as charged, violating Rules 1.1, 1.2, and 1.3.

### 23 24 **A. Acquittal of Criminal Charges Does Not Preclude a Finding of Judicial 25 Misconduct.**

26 Canon 1, Rule 1.1, requires judges to comply with the law, including the Code of Judicial  
Conduct. A criminal conviction would constitute a Code violation, but the interest of the Code

1 is far beyond the interest of the State in people's compliance with criminal laws, which must be  
2 proven beyond a reasonable doubt.<sup>5</sup> The burden of proof in a Commission case is clear, cogent  
3 and convincing. The charges of which Respondent was acquitted in district court were limited to  
4 what could be charged within the statute of limitations. There is no statute of limitations in  
5 Washington State for a Code violation (*see* RCW 2.64.057). The constitutional protections of a  
6 criminal defendant are the most stringent in the legal system, and the Commission panel was  
7 legally permitted to hear evidence that would not be admissible in a criminal case. The charges  
8 under consideration in the case before the Commission ranged back decades and concerning  
9 Respondent's fitness for judicial office, not the narrow question of whether he had violated the  
10 elements of criminal charges on specific occasions. Respondent's attempt to evade  
11 accountability (and his choice to forego the opportunity to contest the charges to seek  
12 exoneration) by resigning from office effective the Friday before the contested hearing ignored  
13 one of the cardinal purposes of the Commission on Judicial Conduct: to articulate to the judiciary  
14 and to the public at large the kind of misconduct that betrays the public trust on the part of a  
15 judicial officer.

16 The Code asks judges to aspire to the highest standards of conduct in their personal and  
17 professional lives.

18  
19 An independent, fair and impartial judiciary is indispensable to our  
20 system of justice. The United States legal system is based upon the  
21 principle that an independent, impartial, and competent judiciary,  
22 composed of men and women of integrity, will interpret and apply the  
23 law that governs our society. Thus, the judiciary plays a central role in  
24 preserving the principles of justice and the rule of law. Inherent in all  
the Rules contained in this Code are the precepts that judges,  
individually and collectively, must respect and honor the judicial office  
as a public trust and strive to maintain and enhance confidence in the  
legal system.

25  
26 <sup>5</sup> Judicial officers have been determined to have violated the Code of Judicial Conduct for violations that  
were never charged in the criminal justice system (*In re Turco*, No. JD 13, Washington State Supreme Court 1999),  
and for facts that resulted in acquittal in the criminal law arena (*In re Hatter*, CJC. No. 93-1445-F-46 (1994);  
affirmed Washington State Supreme Court J.D. No. 11 (December 1994).

1 Preamble to Code of Judicial Conduct, Paragraph [1]

2 Judges impose compliance with law and are held to a higher standard than others in  
3 society. The Code articulates the core values of a justice system that depends on public  
4 confidence in the integrity, independence and competence of each judicial officer. “‘Integrity’  
5 means probity, fairness, honesty, uprightness, and soundness of character” (Terminology  
6 Section, Code of Judicial Conduct). The State Supreme Court has made it clear that there is a  
7 substantial nexus between the ethical obligations of judicial officers and the acts of a judge who  
8 engages in domestic violence. *In re: the Disciplinary Proceedings Against Honorable Ralph*  
9 *G. Turco* (1999) No. JD 13, page 32.

10 The conduct of Respondent reflects an individual who has admitted to being dishonest;  
11 who has engaged in an ongoing pattern of manipulative conduct and who has used the tools and  
12 prestige of judicial office for his personal benefit to attempt to keep other people under his power  
13 and control. His unrestrained manifestations of self-pity and personal suffering upon rejection  
14 that he (at times) admitted he brought upon himself further demonstrate his narcissistic self-  
15 focus.

16 **B. Application of Code to Charges**

17 The following provisions of the Code of Judicial Conduct (Code) are particularly relevant to  
18 the charges against Respondent. We look at the facts and circumstances of each alleged rule  
19 violation and we decide each alleged violation separately. We conclude that each has been  
20 proven by clear, cogent and convincing proof.

21 **Rule 1.1 – Compliance with the Law**

22 This rule is overarching. A judge who violates any other Code provision, will also violate  
23 this rule. We conclude that Respondent violated this rule because he violated Rules 1.2 and 1.3  
24 as set forth below. In addition, we conclude there was clear, cogent and convincing evidence  
25 that Respondent engaged in repeated acts of Domestic Violence Assault against S.B. throughout  
26

1 the course of their relationship, and that he engaged in Domestic Violence Harassment and  
2 Stalking against S.S. in the course of their relationship.

3  
4 **Rule 1.2 - Promoting Confidence in the Judiciary**

5 By engaging in the systematic abuse and domestic violence against his spouse, S.B., over  
6 the majority of their 33 years of marriage, and by engaging in a pattern of harassment and  
7 stalking against S.S. which resulted in S.S. having to obtain an Order of Protection against him,  
8 Respondent failed to act at all times in a manner that promotes public confidence in the  
9 independence, integrity, and impartiality of the judiciary. By so doing, he has failed to avoid  
10 impropriety and the appearance of impropriety.

11 **Rule 1.3 - Avoiding Abuse of the Prestige of Judicial Office**

12 By engaging in the pretext of attempting to enter the Office of Public Defense as  
13 described above and by attempting to use his Benton County keycard to gain entry into the Office  
14 of Public Defense, Respondent has abused his power and role as a judicial officer in order to  
15 advance his own personal interests.

16  
17 **VI. DISCIPLINE**

18 Whether discipline should be imposed should be determined through a  
19 reasonable and reasoned application of the Rules. The relevant factors for  
20 consideration should include the seriousness of the transgression, the facts  
21 and circumstances that existed at the time of the transgression, including the  
22 willfulness or knowledge of the impropriety of the action, the extent of any  
23 pattern of improper activity, whether there have been previous violations, and  
24 the effect of the improper activity upon the judicial system or others.

25 Code of Judicial Conduct, Scope [6].

26 Having determined that Judge Swanberg has violated the Code, we next determine the  
appropriate discipline. Disciplinary counsel recommends that in the event there is a violation,

1 the sanction should be a censure and recommendation for removal, requesting that the Supreme  
2 Court disqualify Respondent from seeking or serving in judicial office in the future. We agree.

3  
4 **Deming Factors (CJCRP 6(c))**

5 In determining an appropriate sanction, the Commission on Judicial Conduct and the  
6 State Supreme Court should consider a non-exclusive list of aggravating and mitigating factors  
7 for a judge who has violated the Code. *In re Deming*, 108 Wn. 2d 82 (1987), CJCRP 6(c).

8 The following mitigating factors were considered important in determining discipline:

9 CJCRP 6(c)(1)(C): that the conduct did not occur in the courtroom (although *In re*  
10 *Deming, supra*, articulates there is a close nexus between domestic abuse and judicial duties);

11 CJCRP (6)(c)(2)(C): the Respondent's comparatively short length of service in a judicial  
12 capacity;

13 CJCRP 6(c)(D): Respondent has had no prior disciplinary action against him, though  
14 this element is arguably negated because of the long-term nature and multiplicity of the  
15 violations.

16 The following aggravating factors under CJCRP 6(c) were considered important in  
17 determining discipline:

18 CJCRP 6(c)(1)(A): The misconduct was a pattern of conduct lasting decades as imposed  
19 against S.B., and followed much of the same pattern of misconduct as inflicted against S.S. The  
20 misconduct was the opposite of an isolated incident.

21 CJCRP 6(c)(1)(B) and (F): The nature, extent, and frequency of occurrence of the acts of  
22 misconduct and the nature and extent to which the acts of misconduct have been injurious to  
23 other persons. The misconduct against S.B. and S.S. were abuses of power and control in the  
24 context of a relationship where Respondent owed S.B. a duty of care and protection. In addition  
25 to emotional abuse and control, Respondent physically abused S.B. about 100 times over the  
26

1 course of 30 years. The misconduct was highly injurious to the women affected and to  
2 Respondent's own children.

3 CJCRP 6(c)(1)(G) and (H): The extent to which the judge exploited the judge's official  
4 capacity to satisfy personal desires; and the effect the misconduct has upon the integrity of and  
5 respect for the judiciary. Respondent's attempted use of his county key badge to gain entry to  
6 S.S.'s new place of work, and his exploitation of his judicial status to gain entry to her office  
7 was undertaken to satisfy his personal desire to maintain control over her in a relationship she  
8 declared fervently to be over.

9 Whereas Respondent's abuse of S.B. took place chiefly in the isolation of the family  
10 residences, Respondent's relentless pursuit of S.S. after she repeatedly told him to leave her  
11 alone took place in an office of attorneys who were able to assist her and called in law  
12 enforcement. All of the witnesses to this event, and the larger community that became aware  
13 of Respondent's extended abuse of S.B., including benchmates, were necessarily negatively  
14 affected by the spectacle of a judge engaging in behavior that puts civil and criminal litigants  
15 in court for domestic violence, harassment, and stalking.

16 CJCRP 6(c)(1)(A) (B), and (E): whether the judge has acknowledged or recognized that  
17 the acts occurred; whether the judge has evidenced an effort to change or modify the conduct;  
18 and whether the judge cooperated with the commission investigation and proceeding. These  
19 factors possibly reflect most negatively against Respondent. He has been dishonest with the  
20 public, under oath, and before and throughout the proceedings, taking no responsibility for his  
21 conduct and portraying himself as the victim. He made multiple public statements and  
22 statements within the context of motions to the Presiding Officer to decry and denigrate the  
23 Commission's constitutionally-mandated proceeding; and declined to participate in the hearing  
24 process to the extent that he could; invoking his Fifth Amendment rights as a witness mostly  
25 likely because he could perceive the likelihood that he would perjure himself under oath.

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DISHONESTY

“Honesty” is one of the “minimum qualifications which are expected of every judge.” *In re Kloepfer*, 782 P.2d 129, 262-63 (California 1989). Dishonest conduct is an element in many removal cases. Not counting cases involving criminal convictions or misrepresentations during conduct commission proceedings, in at least 33 cases, part of the misconduct that formed the basis for removal was dishonest conduct either in relation to the judge’s official duties or in personal conduct.

A Study of State Judicial Discipline Sanctions, Cynthia Gray, American Judicature Society, page 59 (2002).

The process and record of this proceeding led overwhelmingly to the conclusion that the appropriate sanction for these violations is the most severe available to the Commission – censure and a recommendation to the State Supreme Court that Respondent be removed and disqualified for future service in judicial office.<sup>6</sup>

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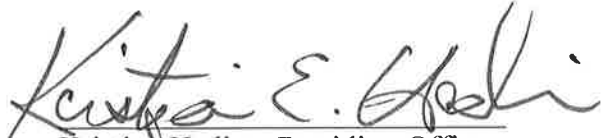
<sup>6</sup> The panel acknowledges that Respondent resigned from office on the eve of the fact-finding hearing. Former judges similarly situated have been censured by the Commission and recommended for removal and disqualification by the State Supreme Court: *In re Deming*, 108 Wn.2d 82, 121 (1987) and *In re Hecht*, CJC No. 5863-F-142 and Washington State Supreme Court No. 200,816-0 (2010).




**ORDER**

Based on the foregoing Decision, the Commission finds that Judge Swanberg has violated Canon 1, Rules 1.1, 1.2, and 1.3 of the Code of Judicial Conduct and issues a Censure, and recommends to the Washington State Supreme Court that the Respondent be removed from office and be disqualified from serving thereafter in any judicial capacity.

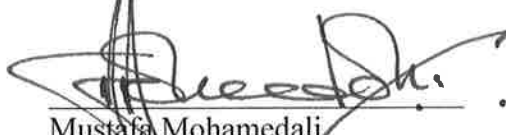
DATED this 6<sup>th</sup> day of September, 2024.

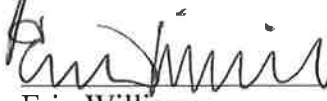
  
Kristian Hedine, Presiding Officer

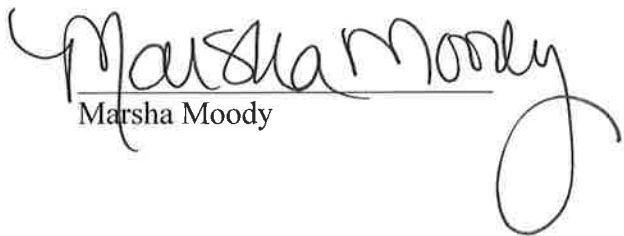
  
Robert Alsdorf

  
Steven James

  
Janet Katz

  
Mustafa Mohamedali

  
Erin Williams

  
Marsha Moody