

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

IN RE THE MATTER OF

The Honorable Judge Tracy S. Flood,
Judge of the Bremerton Municipal Court.

CJC NO. 11005-F-204

STIPULATION TO FACTS AND
CODE VIOLATIONS

Disciplinary Counsel and Tracy S. Flood, Judge of the Bremerton Municipal Court (“Respondent”), stipulate and agree to the following facts and Code of Judicial Conduct Violations and agree to proceed to a hearing as to the appropriate sanction. The Commission is represented in these proceedings by Disciplinary Counsel Raegen N. Rasnic, and Respondent is represented by attorneys Anne Bremner, Ted Buck, and Nick Gross.

I. STIPULATED FACTS

A. Respondent Judge Tracy Flood was elected to serve as sole judge of Bremerton Municipal Court in November 2021. Respondent replaced Judge James Docter, a white male, who had held the position for 24 years before retiring in 2021.

B. Respondent is the first woman and first Black judge to hold the position. This fact has always weighed heavily on Respondent, and in every decision she makes she is mindful she is the first.

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- C. When Respondent took the bench in January 2022, Bremerton Municipal Court was fully staffed (after changes in December 2021) with a Court Administrator, Assistant Court Administrator, Senior Legal Technician, three Legal Technicians, and a Probation Officer. Most of these individuals were long-term employees of Bremerton Municipal Court.
 - D. Respondent did not know any of the court staff before she was elected but retained them all and invited them to her swearing in ceremony. Only two staff members attended.
 - E. Respondent dealt with numerous issues in her first few months on the bench. In addition to being a new judge, the court was vandalized, they dealt with inclement weather issues, and the court had to be closed when court staff were exposed to COVID-19.
 - F. From the beginning of Respondent’s term, staff noticed clear differences in philosophy and approach between Respondent and Judge Docter. Respondent is a veteran of the United States Navy, where she served from 1986 to 1994 and, due in part to that experience, saw the court as a top-down hierarchy, and had a military service philosophy. Judge Flood had a vision for her court and expected her staff to help her execute it. Judge Flood’s approach was different from Judge Docter’s. This difference in approach caused consternation among court staff.
 - G. A byproduct of Respondent’s approach was that several staff members felt Respondent did not respect their knowledge and experience. Some staff members in particular were hurt by this. For example, Probation Officer Ian Coen, who had worked for the court for over 20 years and had played a significant role in developing the court’s program for monitoring and supervision, felt that Respondent did not credit his expertise, causing him frustration and anxiety.

1 H. In 2022, Respondent, facing health issues, instituted COVID-19 protocols including a mask
2 mandate. This was not a popular decision, and Respondent was told some staff may quit,
3 and at least one staff member openly flouted protocols.
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5 I. Respondent quickly began to believe that the court staff were a team and she wasn't on it.
6 On one occasion, Respondent confided in then-Court Administrator Dawn Williams that
7 she felt unwelcomed at the court.

8 J. Respondent believed court staff were resistant to her direction and resistant to change.
9 Respondent believed racial bias – including microaggressions, implicit bias, and tone
10 policing¹ – was a substantial factor in the attitudes of some staff. Respondent believed some
11 staff did not like being told what to do by a Black woman. One staff member refused to
12 call Respondent “Judge” or “Your Honor,” instead calling her “Tracy,” despite being
13 repeatedly asked not to. This staff member went on leave several months after Judge Flood
14 took the bench and resigned by the end of 2022 without returning from leave.

15 K. Tone policing predominantly happens to Black women. They are asked to remove any
16 emotion as they speak, make a suggestion, or recommendation in a meeting. Black women
17 are asked to tailor their message, so the recipient is “able” to hear them and what they are
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19 ¹ Respondent's expert Sarah Dryfoos, MPH,CPH, defines these as:

- 20 • **Microaggressions:** a statement, action, or incident regarded as an instance of indirect,
21 subtle, sometimes unintentional, discrimination against members of a marginalized
22 group such as a racial or ethnic minority.
- 23 • **Implicit Bias:** also known as implicit prejudice or implicit attitude, is a negative
attitude, of which one is not consciously aware, against a specific social group.
- **Tone Policing:** the action or practice of criticizing the manner in which a person has
expressed a point of view, rather than addressing the substance of the point itself.

1 trying to say. Tone policing is a microaggression against Black women that propagates the
2 “angry Black woman” stereotype.

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4 L. Put simply, Respondent felt some staff did not respect or trust her, and some staff felt
5 Respondent did not respect or trust them. This created a problematic dynamic.

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7 M. At times, Respondent verbally admonished staff for not following her instructions or for
8 making mistakes. Though Respondent rarely raised her voice, her communication could be
9 pointed and harsh. Respondent had high expectations for her staff and wanted tasks done
10 in a specific way. When that did not happen, Respondent could be condescending, which
11 made some staff members feel humiliated, embarrassed, and anxious. Some staff believed
12 that Respondent did not clearly communicate her expectations of them, particularly
13 regarding changes to previous processes and procedures, and chastised them if they did not
14 understand what she wanted or if they asked clarifying questions. Staff experienced that
15 Respondent at times met their questions and concerns with impatience and defensiveness,
16 interrupted them, and denied having given unclear instructions. Staff often heard
17 Respondent respond “that’s not what I said” or “I didn’t say that” in response to their
18 concerns. Some staff who experienced this and saw their colleagues experiencing it became
19 increasingly wary of engaging with Respondent.

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21 N. The following examples illustrate Respondent’s Code violations:

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23 a. During an 8 a.m. in-custody calendar in October 2022, Respondent was in court at
the start of the Zoom jail video calendar. Respondent was waiting to be let into
Zoom by clerk Amber Dodge, who was working on another floor. However, Ms.
Dodge was not letting Respondent in and Respondent grew frustrated. Eventually,

1 Respondent walked out of the courtroom and went downstairs to the clerks' office.
2 Ms. Dodge, whom Respondent had hired in August 2022, was interacting with
3 LaTricia Kinlow, Administrator of Tukwila Municipal Court, who had just arrived
4 to provide assistance through "Courts Helping Courts."² Standing in the doorway
5 at the other end of the room, Respondent, in a raised voice, shouted at Ms. Dodge,
6 "I have been waiting in the Zoom waiting room for over 10 minutes! Will someone
7 please let me in!" Ms. Dodge apologized and Respondent went back upstairs to the
8 courtroom.

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- 10 b. In December 2022, the court was preparing for a trial with an in-custody defendant.
11 Respondent stated that the Bremerton Police Department would transport the
12 defendant for his trial. Serena Daigle, Senior Legal Technician, asked about a
13 transport order. Bremerton Police Department did not require an order, only an
14 email to their warrants department was needed. Respondent replied in a
15 condescending manner that she had never signed a transport order in the past.
- 16 c. In February 2023, Respondent called Jennefer Johnson, whom she had hired as
17 Court Administrator in November 2022, and Brian Knowles, a Legal Technician
18 whom Respondent had hired in December 2022, into Ms. Johnson's office.
19 Respondent asked Mr. Knowles about an issue with a judgment and sentence he
20 had completed while working with a remote Pro Tem Judge. Mr. Knowles began
21 to stand up. Respondent told him firmly to sit down. Respondent admonished Mr.

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23 ² "Courts Helping Courts" is a joint program of the District and Municipal Court Judges' Association and
the District and Municipal Court Management Association which helps courts with operational, procedural,
or efficiency issues. Respondent had contacted the program in fall 2022.

1 Knowles, then remarked that the admonishment had been a “teaching moment” for
2 him. Respondent now recognizes that she talked to Mr. Knowles in an impatient
3 and discourteous manner.
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5 d. On occasions, Respondent has treated attorneys appearing before her with
6 discourtesy and impatience , and, during some Zoom hearings, has interrupted
7 attorneys during argument or when they attempted to request clarification of a
8 ruling. For example, during a lengthy pretrial calendar, attorney Ryan Witt
9 believed his case had been called. Respondent told him in a condescending manner,
10 in open court and in front of others on the Zoom, that no, she did not call his case.
11 Mr. Witt felt embarrassed.

12 e. Court Administrator Dawn Williams, who had been in her position since 2011 and
13 had worked for the court since 2003, experienced Respondent as constantly critical
14 of her and believed that nothing she could do would satisfy Respondent’s
15 expectations. Ms. Williams was aware that some other court staff also believed this.
16 Ms. Williams resigned her position in July 2022 for a job at a lower salary and
17 forfeited significant accrued leave.

18 f. Probation Officer Mr. Coen also experienced Respondent as constantly critical of
19 him and believed that nothing he could do would satisfy Respondent’s expectations.
20 Mr. Coen believed that many of Respondent’s instructions were unclear and at odds
21 with his training. Respondent pointed out that Mr. Coen made spelling errors in JIS
22 entries but did not identify what the errors were. and Mr. Coen felt he was being
23 chastised. Mr. Coen shared that he is not easily able to recognize spelling errors

1 because he is dyslexic. Mr. Coen felt humiliated by Respondent's treatment and
2 resigned his position to take a role in a different City department.

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4 g. Serena Daigle came to Bremerton Municipal Court through "Courts Helping
5 Courts" and was hired in December 2022 as a Senior Legal Technician, then made
6 interim Assistant Court Administrator. On one occasion when Ms. Daigle was
7 filling in in the courtroom and Ms. Daigle asked Respondent to clarify a rulings in
8 court, Respondent spoke in a manner Ms. Daigle felt was impatient and
9 discourteous. Because of Respondent's impatience, Ms. Daigle believed that
10 nothing she could do would satisfy Respondent. Ms. Daigle went on leave in
11 February 2023 and resigned in May 2023.

12 h. Steven Desrosier was hired by Respondent in October 2022 as Bremerton
13 Municipal Court's first Therapeutic Court Coordinator and tasked with setting up
14 processes and developing forms for Therapeutic Court. Mr. Desrosier resigned in
15 April 2023.

16 O. In addition to assistance provided through "Courts Helping Courts," other court
17 administrators have assisted Bremerton Municipal Court on an ongoing basis and have
18 allowed Bremerton court staff to train at their courts. Retired administrator Maury Baker
19 volunteered to assist the court in summer 2023 to allow Assistant Court Administrator
20 Christina Rauenhorst and other new staff to obtain training.

21 P. In 2022, the City of Bremerton determined that its Human Resources department lacked
22 legal authority to investigate complaints filed by Bremerton Municipal Court employees
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1 because Bremerton Municipal Court's Presiding Judge had authority to control all areas of
2 the court's employee relations aside from wages.

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4 Q. Respondent recognizes that multiple staff left the employment of Bremerton Municipal
5 Court because of her changes and communications. Some current staff are relatively
6 inexperienced.

7 **II.** S. The effect of Respondent's conduct on staff and attorneys has been brought
8 to Respondent's attention by those affected by the conduct and by the
9 Commission on Judicial Conduct. During the Commission's confidential
10 proceedings Respondent engaged an executive coach, of her choosing. The
11 coach had sessions with Respondent as well as court staff. After the sessions
12 Respondent's violations continued, and other staff left. **AGREEMENT**

13 **A. Respondent Violated the Code of Judicial Conduct.**

14 1. Respondent agrees she violated Canon 1, Rules 1.1 and 1.2 and Canon 2, Rules
15 2.8(B) of the Code of Judicial Conduct in that she failed to treat some court staff with patience,
16 dignity, and respect, and in treating some court staff in a demeaning and condescending manner.

17 2. Canon 1 expresses the overarching principles of the Code of Judicial Conduct:
18 because judges represent the administration of justice and the rule of law, to preserve public
19 confidence in our legal system, they must avoid impropriety and the appearance of impropriety
20 and act in a manner that is always above reproach. Specifically, Rule 1.1 provides, "A judge shall
21 comply with the law, including the Code of Judicial Conduct." Rule 1.2 provides, "A judge shall
22 act at all times in a manner that promotes public confidence in the independence, integrity, and
23 impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

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3. Canon 2 expresses the overarching principles that a Judge should perform the duties of the judicial office impartially, competently, and diligently. Specifically, Rule 2.8(B) provides, “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.”

4. Respondent has faced numerous hurdles in her tenure as Bremerton Municipal Court’s Presiding Judge, including being the first female and first Black judge in the Court’s history; taking over for a white male judge who had just retired after 24 years in the position; inheriting the departing judge’s full staff, most of whom were long-term employees who had become accustomed to the prior judge’s approach which was different from Respondent’s; handling racial bias from her own staff including microaggressions, implicit bias, and tone policing; facing the COVID-19 pandemic and her own health issues; and learning and navigating all aspects of being a permanent judge while being the only judge in the court.

5. Regardless of these hurdles, Respondent must comply with the Code of Judicial Conduct and failed to do so on a number of occasions. Respondent was impatient, disrespectful and discourteous to staff and attorneys, interrupting them and speaking to them in a harsh and/or condescending tone. Respondent acknowledges that her actions showed poor judgment.

6. Respondent stipulates and agrees that any sanction will include her good faith participation in and successful completion of a plan of training, coaching, and mentoring approved in advance by the Commission Chair or their designee, with reports to be made to the Commission on a quarterly basis beginning one month after the entry of this Stipulation. Respondent further

1 agrees to execute any consent or release necessary to allow Commission staff to communicate with
2 the trainer, coach or mentor regarding Respondent's progress.

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4 7. The parties agree that the case will proceed to hearing on the issue of sanction.
5 Disciplinary counsel agrees that Censure with removal will not be recommended. The parties
6 agree that this Stipulation and Agreement shall not limit either party's ability to present evidence
7 pertinent to the *Deming* factors³ and CJCRP 6(c)(1)(A)-(H). The parties agree that the hearing will
8 commence via the Zoom platform on Wednesday October 23, 2024, and continue through
9 Thursday October 24, 2024, with additional time if ordered by the Court, on Friday October 25,
10 2024, or another date selected by the Court.

11 8. Each party may present the testimony of up to five (5) live witnesses, who shall be
12 subject to cross-examination. If Respondent does not testify in her case, Disciplinary Counsel may
13 call Respondent as an additional live witness. In addition, each party may submit the testimony of
14 up to six (6) additional witnesses via sworn declaration not to exceed fifteen (15) pages in length
15 (12-point Times New Roman font, double-spaced). Counsel shall exchange witness declarations
16 no later than the close of business on October 22, 2024. Any declaration exhibits shall be limited
17 to documents included in that party's exhibit list. Either counsel may request by 8:00 a.m. on
18 October 23, 2024 that any witness whose testimony is presented via sworn declaration be made
19 available for cross-examination, indicating the anticipated duration of cross-examination.

20 9. The parties agree that this Stipulation and Agreement may not be withdrawn.
21 Respondent understands and agrees that in the event she or her counsel do not appear for the
22 sanction hearing on the schedule set forth above, the hearing will proceed in Respondent's absence.

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³ *Matter of Deming*, 108 Wn.2d 82, 119-120, 736 P.2d 639 (1987).

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Tracy Flood

Honorable Tracy S. Flood
Bremerton Municipal Court
Judge

Oct 21, 2024

Date

Anne Bremner

Anne Bremner (Oct 21, 2024 09:20 PDT)

Anne Bremner, WSBA #13269
Ted Buck, WSBA #22029
Nick Gross, WSBA #48236
Attorneys for Respondent

Oct 21, 2024

Date

Raegen Rasnic

Raegen N. Rasnic, WSBA 25480
Disciplinary Counsel
Commission on Judicial Conduct

Oct 21, 2024

Date