

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE ELIZABETH W. JOHNSON

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT
PURSUANT TO STIPULATION
(Commission Rule 116.5)

This disciplinary matter concerns Judge Elizabeth W. Johnson, a judge of the Trinity County Superior Court. Judge Johnson and her counsel James A. Murphy, of Murphy, Pearson, Bradley & Feeney, have entered into a stipulation with commission trial counsel Mark A. Lizarraga pursuant to commission rule 116.5 to resolve the pending preliminary investigation involving Judge Johnson by imposition of a public admonishment with the judge's agreement to resign from judicial office and not seek or hold judicial office in the future. The Stipulation for Discipline by Consent (Stipulation) was approved by the commission on January 16, 2018, pursuant to the following terms and conditions and stipulated facts and legal conclusions.

TERMS AND CONDITIONS

1. This agreement resolves the matters alleged in the commission's pending preliminary investigation involving Judge Johnson.
2. The commission shall issue a public admonishment based on the agreed Stipulated Facts and Legal Conclusions set forth therein.
3. If the commission accepts this proposed disposition, the commission's decision and order imposing public admonishment may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.
4. Upon acceptance by the commission, this stipulation and the commission's decision and order shall be made public.
5. Judge Johnson waives any further proceedings and review in this matter, including the public admonishment procedure (commission rules 115-116), formal

proceedings (rules 118, et seq.), and review by the Supreme Court (Cal. Rules of Court, rule 9.60).

6. Judge Johnson has agreed to resign from her position as a judge, effective January 18, 2018.

7. If Judge Johnson fails to resign in accordance with this agreement, the commission may withdraw the public admonishment and resume the preliminary investigation as to all of the matters in the preliminary investigation letters. Failure to comply with the terms and conditions of this agreement may also constitute additional and independent grounds for discipline.

8. Judge Johnson has agreed not to seek or hold judicial office, or accept a position or assignment as a judicial officer, subordinate judicial officer, or judge pro tem with any court in the State of California, or accept a reference of work from any California state court, at any time in the future.

9. If Judge Johnson attempts to serve in a judicial capacity in violation of the foregoing paragraph, the commission may withdraw the public admonishment and resume the preliminary investigation as to all of the matters in the preliminary investigation letters. Additionally, the commission may refer the matter to the State Bar of California.

STIPULATED FACTS AND LEGAL CONCLUSIONS

Judge Johnson has been a judge of the Trinity County Superior Court since January 2013.

1. In 2007, Judge Johnson and her husband, Charles J. Johnson, obtained a Community Development Block Grant loan from Trinity County in the amount of \$185,000 in connection with their ownership and operation of the Trinity Alps Golf Course. The terms of the loan required the Johnsons to make payments of \$2,148.01 on the 22nd of each month.

On February 19, 2014, in connection with a prior investigation, the commission sent Judge Johnson a preliminary investigation letter in which it was alleged that, among

other things, there were deficiencies in the Johnsons' payment of the loan and that the Johnsons defaulted on their obligations to pay the loan.

Judge Johnson responded to the preliminary investigation letter by letter dated March 31, 2014. The judge's response stated, "The Johnson's [*sic*] lost the business but continue to make payments on the loan." The judge's statement to the commission that she and her husband were continuing to make payments on the loan was not true. As of August 5, 2013, the Johnsons had failed to make payments required by the terms of the loan while they were negotiating a resolution and repayment program on the loan. In fact, the Johnsons did not make any payments on the loan between August 5, 2013 and November 1, 2015.

The above conduct violated Judge Johnson's duties to uphold the integrity of the judiciary (canon 1), to avoid impropriety and the appearance of impropriety (canon 2), and to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity of the judiciary (canon 2A).

2. On 14 occasions from July 2014 to January 2016, Judge Johnson used the court's Cal Card credit card in a manner not permitted by the policies adopted by the Judicial Council as set forth in the Trial Court Financial Policies and Procedures Manual (the "FIN Manual"), including using the credit card for personal purposes unrelated to court business and other improper purposes (such as lunches with other court personnel that did not meet the FIN Manual requirements), and failing to provide the requisite supporting documents, such as receipts. These fourteen incidents involved total charges of \$740.22.

Nine incidents concerned restaurant charges incurred either in connection with meetings the judge held with court personnel that involved court business, or for staff lunches when court sessions were held at a branch court, which the judge believed constituted business travel and would be reimbursable. Four incidents involved travel-related charges incurred in connection with legal conferences the judge attended in Southern California, either for continuing education requirements or to give a

presentation. One incident involved a charge of \$36.36 for a personal matter unrelated to court business.

Judge Johnson acknowledged that her use of the Cal Card for these charges was improper and not in compliance with the requirements set forth in the FIN Manual. With the exception of one charge, at the time these charges were incurred, the judge believed she could properly use the Cal Card because the charges concerned business purposes or travel. The judge reimbursed the court for all of the above charges after learning that her conduct and interpretation was improper.

The above conduct violated the judge's duties to uphold the integrity of the judiciary (canon 1), to avoid impropriety and the appearance of impropriety (canon 2), and to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity of the judiciary (canon 2 A).

3. Judge Johnson frequently arrived at the courthouse after her 9:00 a.m. calendar was scheduled to start. Between January 1, 2013 and August 10, 2015, on days the judge had calendars set to begin at 9:00 a.m., she arrived at the courthouse (not her courtroom or chambers) after 9:00 a.m. at least 42 times.

While most of these incidents involved the judge arriving at the courthouse within 10 minutes of 9:00 a.m., several involved longer time periods, and typically there was additional delay between the time the judge entered the courthouse and the time she took the bench.

On a weekday in July 2013, the judge had a 1:30 p.m. calendar. During lunch that day, the judge and the court executive officer went to a bakery to pick up a cake for a going-away party for a member of court personnel. The writing on the cake needed to be corrected, and the court executive officer offered to wait for it so the judge could go to court. The judge insisted on staying and waiting for the cake, which delayed her return to court until approximately 2:00 p.m.

On December 21, 2015, the judge was approximately 30 minutes late in taking the bench for her felony calendar.

On March 14, 2017, the judge had 26 matters on calendar at 8:59 a.m. and nine matters on calendar at 9:00 a.m. The judge arrived at the courthouse approximately 30 minutes late and took the bench thereafter.

On May 2, 2017, the judge had 15 matters on calendar at 8:59 a.m. and 22 matters on calendar at 9:00 a.m. The judge arrived at the courthouse approximately 15 minutes late and took the bench thereafter.

On each of these occasions, the judge's tardiness caused numerous people who were at court on time, including parties, attorneys, and court personnel, to have to wait for her to take the bench.

The above conduct violated the judge's duties to give her judicial duties precedence over all other activities (canon 3A), to dispose of all judicial matters fairly, promptly and efficiently (canon 3B(8)), and to act at all times in a manner that promotes public confidence in the integrity of the judiciary (canon 2A).

4. In July 2014, Judge Johnson revised the existing Trinity County Superior Court Local Rules without complying with the requirements of California Rules of Court, rule 10.613, pertaining to the drafting and amendment of local rules; specifically, the requirement that the court provide copies of proposed modifications of local rules to various local agencies, including the local county bar association and the district attorney's office, for comment at least 45 days before the rules are adopted. In early January 2016, the judge again revised the Trinity County Superior Court Local Rules without complying with rule 10.613.

The above conduct violated the judge's duties to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity of the judiciary (canon 2A), and to maintain professional competence in judicial administration (canon 3C(2)).

5. Trinity County does not have a public defender's office. As a consequence, private attorneys are hired by the Trinity County Auditor-Controller to serve as appointed public defenders on a yearly contract basis. Attorneys Laura Woods and Larry Olson were hired in that capacity for the fiscal year that began on July 1, 2015.

On August 5, 2015, due to a conflict of interest of the new public defenders and several other appointed conflict counsel, Judge Johnson issued a minute order appointing Attorney James Underwood as the public defender to represent the conservatee in *Matter of J.W.*, No. 15PR013. The judge and Mr. Underwood were name partners in the law firm of Wilkins Underwood & Johnson until shortly before the judge took the bench in January 2013. The minute order did not disclose the judge's prior partnership relationship with Mr. Underwood. The minute order noted that the next hearing in the case was set in the judge's department on August 17, 2015.

On August 17, 2015, the parties and counsel, including Mr. Underwood, appeared before the judge for a hearing on the petition for appointment of conservator. Judge Johnson did not disqualify herself from the case or disclose on the record her prior partnership relationship with Mr. Underwood. The judge also did not include in the court file any record of her prior partnership relationship with Mr. Underwood.

The above conduct violated the judge's duties to avoid impropriety and the appearance of impropriety (canon 2), to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A), to exercise the power of appointment impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary (canon 3C(5)), and to disqualify herself and/or disclose on the record information that is reasonably relevant to the question of disqualification even if the judge believes there is no actual basis for disqualification (canon 3E).

Judge Johnson's conduct described herein was, at a minimum, improper action pursuant to article VI, section 18, subdivision (d)(3) of the California Constitution.

In 2014, the judge received an advisory letter for failing to disclose in cases she presided over in which Trinity County was a party that her family business had an outstanding loan from the county. The advisory letter noted that the judge's conduct violated her duties under canon 3E(2).

Judge Johnson expressly admits that the foregoing facts are true and that she agrees with the stated legal conclusions.

DISCIPLINE

Judge Johnson engaged in multiple instances of misconduct that undermines public confidence in the integrity and impartiality of the judiciary. The Supreme Court has recognized that providing material misinformation to the commission in the course of the commission's investigation is particularly serious misconduct. (*Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 914; *Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865, 887-891.) The totality of the judge's misconduct, including improper use of the court's Cal Card credit card; numerous incidents of tardiness in arriving to court and taking the bench; revising local court rules without following required procedures; and appointing her former law partner to represent a party in a conservatorship proceeding without disqualifying or disclosing her former partnership relationship, reflects a pattern of failure or inability to abide by basic rules and ethical standards required of all judges. This pattern is aggravated by the fact that Judge Johnson again failed to disqualify or disclose a relationship when required by law after having been previously disciplined for failure to disclose in cases she presided over, in which Trinity County was a party, that her family business had an outstanding loan from the county.

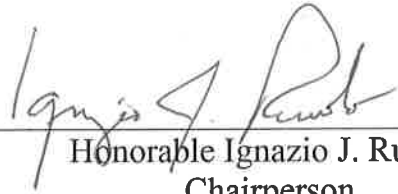
Although the stipulated facts might otherwise warrant greater discipline, the commission has determined that acceptance of the Stipulation is in the best interest of the public because the judge has agreed to resign from office and not to serve as a judicial officer after her resignation. Furthermore, acceptance of the Stipulation resolves the matter in a manner that protects the public while avoiding the delay of further proceedings. For these reasons, the commission imposes this public admonishment upon the terms and conditions in the attached Stipulation.

Commission members Hon. Ignazio J. Ruvolo; Nanci E. Nishimura, Esq.; Ms. Mary Lou Aranguren; Anthony P. Capozzi, Esq.; Mr. Eduardo De La Riva; Ms. Sarah Kruer Jager; Ms. Pattyl A. Kasparian; Dr. Michael A. Moodian; Mr. Adam N. Torres and

Hon. Erica R. Yew voted to accept the Stipulation and issue this public admonishment.
Commission member Hon. Michael B. Harper is recused from this matter.

Date: January 16, 2018

On behalf of the
Commission on Judicial Performance,



Honorable Ignazio J. Ruvolo
Chairperson

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE ELIZABETH W. JOHNSON

STIPULATION FOR DISCIPLINE
BY CONSENT (Rule 116.5)

Pursuant to Rules of the Commission on Judicial Performance, rule 116.5, Judge Elizabeth W. Johnson of the Trinity County Superior Court, represented by counsel James A. Murphy, and commission trial counsel (the “parties”) submit this proposed disposition of the matters set forth in the commission’s preliminary investigation letters dated March 11, 2016, October 20, 2016, and May 16, 2017. The parties request that the commission resolve this matter by imposition of a public admonishment. The parties believe that the settlement provided by this agreement is in the best interests of the commission and Judge Johnson because, among other reasons, the public admonishment and the judge’s agreement to resign from office and not to serve as a judicial officer after her resignation adequately protect the public and will avoid the delay and expense of further proceedings.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the commission’s pending preliminary investigation involving Judge Johnson.
2. The commission shall issue a public admonishment based on the agreed Stipulated Facts and Legal Conclusions set forth therein.

3. If the commission accepts this proposed disposition, the commission's decision and order imposing public admonishment may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.

4. Upon acceptance by the commission, this stipulation and the commission's decision and order shall be made public.

5. Judge Johnson waives any further proceedings and review in this matter, including the public admonishment procedure (commission rules 115-116), formal proceedings (rules 118, et seq.), and review by the Supreme Court (Cal. Rules of Court, rule 9.60).

6. Judge Johnson has agreed to resign from her position as a judge, effective January 18, 2018.

7. If Judge Johnson fails to resign in accordance with this agreement, the commission may withdraw the public admonishment and resume the preliminary investigation as to all of the matters in the preliminary investigation letters. Failure to comply with the terms and conditions of this agreement may also constitute additional and independent grounds for discipline.

8. Judge Johnson has agreed not to seek or hold judicial office, or accept a position or assignment as a judicial officer, subordinate judicial officer, or judge pro tem with any court in the State of California, or accept a reference of work from any California state court, at any time in the future.

9. If Judge Johnson attempts to serve in a judicial capacity in violation of the foregoing paragraph, the commission may withdraw the public admonishment and resume the preliminary investigation as to all of the matters in the preliminary investigation letters. Additionally, the commission may refer the matter to the State Bar of California.

10. The commission may reject this proposed disposition and resume its preliminary investigation. If the commission does so, nothing in this proposed disposition will be deemed to be admitted by Judge Johnson.

Accordingly, it is hereby stipulated and agreed that the commission shall issue a public admonishment on the above Terms and Conditions of Agreement, and based on the following Stipulated Facts and Legal Conclusions.

STIPULATED FACTS AND LEGAL CONCLUSIONS

Judge Johnson has been a judge of the Trinity County Superior Court since January 2013.

1. In 2007, Judge Johnson and her husband, Charles J. Johnson, obtained a Community Development Block Grant loan from Trinity County in the amount of \$185,000 in connection with their ownership and operation of the Trinity Alps Golf Course. The terms of the loan required the Johnsons to make payments of \$2,148.01 on the 22nd of each month.

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The above conduct violated Judge Johnson's duties to uphold the integrity of the judiciary (canon 1), to avoid impropriety and the appearance of impropriety (canon 2), and to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity of the judiciary (canon 2A).

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Judicial Council as set forth in the Trial Court Financial Policies and Procedures Manual (the "FIN Manual"), including using the credit card for personal purposes unrelated to court business and other improper purposes (such as lunches with other court personnel that did not meet the FIN Manual requirements), and failing to provide the requisite supporting documents, such as receipts. These fourteen incidents involved total charges of \$740.22.

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On a weekday in July 2013, the judge had a 1:30 p.m. calendar. During lunch that day, the judge and the court executive officer went to a bakery to pick up a cake for a going-away party for a member of court personnel. The writing on the cake needed to be corrected, and the court executive officer offered to wait for it so the judge could go to court. The judge insisted on staying and waiting for the cake, which delayed her return to court until approximately 2:00 p.m.

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On each of these occasions, the judge's tardiness caused numerous people who were at court on time, including parties, attorneys, and court personnel, to have to wait for her to take the bench.

The above conduct violated the judge's duties to give her judicial duties precedence over all other activities (canon 3A), to dispose of all judicial matters fairly, promptly and efficiently (canon 3B(8)), and to act at all times in a manner that promotes public confidence in the integrity of the judiciary (canon 2A).

4. In July 2014, Judge Johnson revised the existing Trinity County Superior Court Local Rules without complying with the requirements of California Rules of Court, rule 10.613, pertaining to the drafting and amendment of local rules; specifically, the requirement that the court provide copies of proposed modifications of local rules to

various local agencies, including the local county bar association and the district attorney's office, for comment at least 45 days before the rules are adopted. In early January 2016, the judge again revised the Trinity County Superior Court Local Rules without complying with rule 10.613.

The above conduct violated the judge's duties to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity of the judiciary (canon 2A), and to maintain professional competence in judicial administration (canon 3C(2)).

5. Trinity County does not have a public defender's office. As a consequence, private attorneys are hired by the Trinity County Auditor-Controller to serve as appointed public defenders on a yearly contract basis. Attorneys Laura Woods and Larry Olson were hired in that capacity for the fiscal year that began on July 1, 2015.

On August 5, 2015, due to a conflict of interest of the new public defenders and several other appointed conflict counsel, Judge Johnson issued a minute order appointing attorney James Underwood as the public defender to represent the conservatee in *Matter of J.W.*, No. 15PR013. The judge and Mr. Underwood were name partners in the law firm of Wilkins Underwood & Johnson until shortly before the judge took the bench in January 2013. The minute order did not disclose the judge's prior partnership relationship with Mr. Underwood. The minute order noted that the next hearing in the case was set in the judge's department on August 17, 2015.

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The above conduct violated the judge's duties to avoid impropriety and the appearance of impropriety (canon 2), to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A), to exercise the power of appointment impartially, on the basis of


merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary (canon 3C(5)), and to disqualify herself and/or disclose on the record information that is reasonably relevant to the question of disqualification even if the judge believes there is no actual basis for disqualification (canon 3E).

Judge Johnson's conduct described herein was, at a minimum, improper action pursuant to article VI, section 18, subdivision (d)(3) of the California Constitution.

In 2014, the judge received an advisory letter for failing to disclose in cases she presided over in which Trinity County was a party that her family business had an outstanding loan from the county. The advisory letter noted that the judge's conduct violated her duties under canon 3E(2).

By signing this stipulation, in addition to consenting to discipline on the terms set forth, Judge Johnson expressly admits that the foregoing facts are true and that she agrees with the stated legal conclusions.

Dated: December 18, 2017.



Judge Elizabeth W. Johnson

Dated: 12/29, 2017.



James A. Murphy, Esq.
Attorney for Judge Elizabeth W. Johnson

Dated: Jan. 4, 2018

2017.

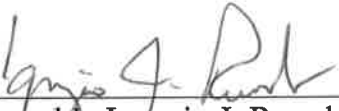


Gregory Dresser
Director-Chief Counsel

ACCEPTANCE OF STIPULATION FOR DISCIPLINE BY CONSENT
IN THE MATTER CONCERNING JUDGE ELIZABETH W. JOHNSON
(CJP 41682/42909)

The foregoing Stipulation for Discipline by Consent is accepted by the
Commission on Judicial Performance.

Dated: January 16, 2018



Honorable Ignazio J. Ruvolo
Chairperson
Commission on Judicial Performance