

SUPREME COURT OF ARIZONA

FILED

SEP 25 2007

RACHELLE M. RESNICK  
CLERK SUPREME COURT  
BY

IN THE MATTER OF JUDGE

JACQUELINE MCVAY

Northeast Phoenix Justice Court

Maricopa County

State of Arizona

Respondent

) Supreme Court No. JC-07-0003

) Commission No. 06-181

) JUDGMENT AND ORDER

This matter having come before the Commission on Judicial Conduct, it having duly rendered and filed its recommendation, and all applicable rights to object to or petition for modification of the recommendation having been waived by Respondent, and the Court having declined *sua sponte* review,

**IT IS ORDERED, ADJUDGED AND DECREED** that **Jacqueline McVay**, a justice of the peace in the Northeast Phoenix Justice Court, Maricopa County, is hereby suspended for a period of 60 days without pay for violations of the Code of Judicial Conduct as described in the Commission's Recommendation, a copy of which is attached.

DATED this 25th day of September, 2007.

*Rachelle M. Resnick*

RACHELLE M. RESNICK

Clerk of the Court

TO:

A. Melvin McDonald, Respondent's Counsel

Linda Haynes, Disciplinary Counsel

E. Keith Stott, Jr., Executive Director

Commission on Judicial Conduct

West Publishing Company

Lexis/Nexis

Arizona Commission on Judicial Conduct  
1501 West Washington Street, Suite 229  
Phoenix, AZ 85007  
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**FILED**

**JUL 30 2007**

ARIZONA COMMISSION ON  
JUDICIAL CONDUCT

**STATE OF ARIZONA**  
**COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning Judge	)	
	)	Supreme Court No. JC-07-0003
<b>JACQUELINE MCVAY</b>	)	
Northeast Phoenix Justice Court	)	Commission Case No. 06-181
Maricopa County	)	
State of Arizona	)	
	)	<b>RECOMMENDATION</b>
Respondent	)	
	)	

---

On October 18, 2006, the Commission on Judicial Conduct (Commission) filed a Statement of Charges against Justice of the Peace Jacqueline McVay (Respondent) based on a finding of reasonable cause by a three-member panel assigned to oversee the investigation in this case. On the same date, the chairperson of the Commission appointed an eight-member hearing panel to hear and take evidence in the case and designated the undersigned as the presiding member of the panel.

On December 14, 2006, Respondent and Disciplinary Counsel submitted an Agreement for Stipulated Censure which the hearing panel unanimously approved, with amendments, on December 15, 2006. The hearing panel submitted its recommendations, which included a censure under Rule 18(a) of the Rules of the Commission on Judicial Conduct (Rules) and other formal sanctions under Rule 18(e), to the Court on December 26, 2006. The Court rejected the recommendations on May 24, 2007, and remanded the case to the Commission for further proceedings.

On July 20, 2007, Respondent and Disciplinary Counsel submitted an Agreement for Stipulated Suspension (Stipulation) containing an unconditional acceptance of a 60-day suspension, under Rule 18(a), and a waiver of Respondent's right to appeal and all other procedural rights set forth in Rule 29. On July 23, 2007, the hearing panel met telephonically and voted unanimously to accept the Stipulation, a copy of which is attached and incorporated herein by reference.

In accordance with the terms and conditions of the Stipulation, the hearing panel recommends to the Court that Respondent be suspended for a period of 60 days without pay, that the parties pay their own costs and attorneys' fees, and that the parties comply with all other conditions set forth in the stipulated agreement.

RESPECTFULLY SUBMITTED this 30th day of July 2007.

FOR THE HEARING PANEL

A handwritten signature in cursive script, reading "Robert M. Brutinel", written over a horizontal line.

Hon. Robert M. Brutinel  
Presiding Member of the Hearing Panel

Copies of this pleading were delivered or sent via fax  
and mail this 30th day of July 2007 to:

A. Melvin McDonald, Respondent's Counsel  
Jones, Skelton & Hochuli, P.L.C.  
2901 N. Central Avenue, Suite 800  
Phoenix, AZ 85012

Linda Haynes, Disciplinary Counsel  
Commission on Judicial Conduct  
1501 W. Washington Street, Suite 229  
Phoenix, Arizona 85007

By: Linda Starks

Arizona Commission on Judicial Conduct  
1501 West Washington Street, Suite 229  
Phoenix, AZ 85007  
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**FILED**

**JUL 20 2007**

**ARIZONA COMMISSION ON  
JUDICIAL CONDUCT**

**STATE OF ARIZONA  
COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning Judge )  
JACQUELINE B. McVAY )  
Dreamy Draw Court )  
Maricopa County )  
State of Arizona )  
Respondent )

Case No. 06-181

**AGREEMENT FOR  
STIPULATED SUSPENSION**

Judge Jacqueline B. McVay ("Respondent") and Linda Haynes, Disciplinary Counsel for the Commission on Judicial Conduct ("Commission"), hereby submit the following proposed resolution of this case pursuant to Rule 30 of the Rules of the Commission on Judicial Conduct ("Rules").

**AGREEMENT**

1. The Commission has jurisdiction over these matters pursuant to Article 6.1 of the Arizona Constitution.

2. Respondent has served as a full-time justice of the peace in the Northeast Phoenix Justice Court since January 1, 1989. In the fall of 2005, the court was collocated to the Northeast Regional Court Center and renamed "Dreamy Draw." Respondent was serving in her capacity as a justice of the peace at all times relevant to the allegations contained herein.

3. As a justice of the peace, Respondent is and has been subject to all provisions of the Code of Judicial Conduct (CJC) as set forth in Supreme Court Rule 81.

#### **BACKGROUND**

4. On October 18, 2006, Disciplinary Counsel filed a formal Statement of Charges against Respondent after a duly appointed investigative panel found reasonable cause to commence formal proceedings.

#### **MUTUAL CONSIDERATION**

5. Respondent admits committing the acts of judicial misconduct and corresponding ethical violations set forth below. In consideration thereof, the Commission shall dismiss any allegations not specifically referred to in this agreement. The dismissal of charges by the Commission should not be construed as a comment as to whether there was sufficient evidence to prove those allegations by clear and convincing evidence.

#### **MATERIAL FACTS**

6. Respondent admits that she was disciplined by the Commission in 1994, when she was criticized for being late to court. In 2003 she was reminded by the Commission in a written letter to begin court proceedings on time. In 2004 she was censured by the Supreme Court for being habitually tardy.

7. The parties agree that after the 2004 public censure was issued, her punctuality improved; however, after a few months, she did not arrive when her calendar was scheduled to begin. These late arrivals occurred on several occasions in the years 2004 and 2005.

8. Respondent admits that in the spring of 2006, after the collocation was completed, she began to arrive late in the courtroom, between five and eighteen minutes after her calendar was scheduled to begin. While tardiness complaints against Respondent from attorneys and litigants significantly dropped after her 2004 censure, the parties agree that the absence of complaints did not justify or excuse arriving late for her cases almost 20 percent of the time, given the censure and her prior disciplinary warnings.

9. Respondent admits that in May of 2006, complaints were filed against her by several members of the collocated staff alleging that she often blamed the clerks when she was late taking the bench. She at times claimed that the delay was caused by incomplete and lost files attributable to the collocation. The staff members complained that Respondent at times verbally chastised staff in the administrative area, interrupted staff meetings to require administrators to look for files when clerks were available to help, and at times criticized clerks when files were not in order. While some staff are committed to Judge McVay and have expressed a desire to work with her on a permanent basis, others dislike her and do not want to work for her.

10. Respondent admits that beginning in April 2006, several staff members who worked in the collocated facility and had worked with or were assigned to Respondent requested transfers or left their employment indicating that at least one reason for leaving was Respondent's treatment of the clerical staff. While a number of staff respect Respondent and have requested to work for her directly, Respondent acknowledges that several clerks expressing strong sentiments against working for her is unacceptable, and reflects that she has fallen short of her responsibilities of being patient and courteous with staff.



## ADMISSIONS CONCERNING CODE OF JUDICIAL CONDUCT

11. Respondent admits that her continuing tardiness violated Code of Judicial Conduct Canons 1A ("A judge must maintain, enforce and personally observe high standards of conduct"), 3C(1) ("A judge shall diligently discharge [Respondent's] administrative responsibilities . . . and maintain professional competence in judicial administration . . ."), 3B(8) ("A judge shall dispose of all judicial matters promptly, efficiently and fairly."). By being absent from the court during court business hours, Respondent violated Canon 3A ("[T]he judicial duties of a judge take precedence over all the judge's other activities.").

12. Respondent admits that by not complying with the Commission's warnings and not sufficiently modifying her behavior after receiving a censure from the supreme court, Respondent violated Canon 1 ("A judge shall uphold the integrity . . . of the judiciary"), Canon 3 ("A judge shall perform the duties of judicial office . . . diligently"), and Canon 3C(1) ("A judge shall diligently discharge the judge's administrative responsibilities . . ."),

13. Respondent agrees that tardiness by a judge constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of Article 6.1 § 4 of the Arizona Constitution.

14. Respondent admits that by criticizing her staff in front of others, she violated Canon 1A, which states: "A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved," and Canon 3B(4),



which requires a judge to be "patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others."

15. The parties agree that Respondent is a productive Justice of the Peace who has been responsible for and resolved approximately 250,000 cases during her 18-year judicial career.

#### **AGREED UPON SANCTION**

16. Respondent agrees that a 60 day suspension is an appropriate sanction for her misconduct.

17. The parties agree that upon completion of the 60 day suspension, Respondent Judge McVay shall return to her duties as Justice of the Peace at the Dreamy Draw Court.

#### **OTHER TERMS AND CONDITIONS**

18. This agreement, if accepted by the hearing panel, fully resolves all issues raised in the Statement of Charges and may be used as evidence in later proceedings in accordance with the Commission's Rules. If the hearing panel does not accept this agreement as a full resolution, then the admissions made by Respondent are withdrawn, and the matter will be set for hearing without use of this agreement.

19. Pursuant to Commission Rule 28(a), both parties waive their right to object to the hearing panel's proposed recommendations and their right to appeal the charges at issue in this matter, including the appeal procedures set out in Commission Rule 29,


20. Both parties agree not to make any statements to the press that are contrary to the terms of this agreement.

21. Both parties will pay their own costs and attorneys' fees associated with this case.

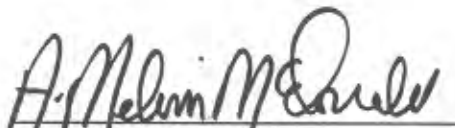
22. Respondent clearly understands the terms and conditions of this agreement and fully agrees with its terms.

234. This agreement constitutes the complete understanding between the parties.

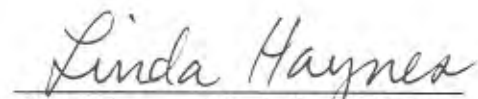
**SUBMITTED** this 10th day of July, 2007.

  
Jacqueline B. McVay  
Respondent

7-10-07  
Date

  
A. Melvin McDonald, Jr.  
Counsel for Respondent

7/10/07  
Date

  
Linda Haynes, Disciplinary Counsel  
Commission on Judicial Conduct

7-10-07  
Date

SUPREME COURT OF ARIZONA  
En Banc

FILED

MAY 24 2007

RACHELLE M. RESNICK  
CLERK SUPREME COURT  
BY

In the Matter of ) Arizona Supreme Court  
JACQUELINE McVAY, Justice of ) No. JC-06-0002  
the Peace, )  
Respondent. ) Commission on Judicial  
Conduct  
No. 06-181  
O P I N I O N

Review from the Commission on Judicial Conduct

**RECOMMENDATION REJECTED; REMANDED**

JONES, SKELTON & HOCHULI, P.L.C. Phoenix  
By A. Melvin McDonald, Jr.  
Attorney for Jacqueline McVay

COMMISSION ON JUDICIAL CONDUCT Phoenix  
By Linda Haynes, Disciplinary Counsel  
Attorney for Commission on Judicial Conduct

WILENCHIK & BARTNESS, P.C. Phoenix  
By Dennis I. Wilenchik  
William P. French  
Kathleen E. Rapp  
Attorneys for Amicus Curiae Maricopa County Justice of the Peace  
Bench

R Y A N, Justice

¶1 This case requires us to decide whether the Commission on Judicial Conduct (Commission) improperly considered the effect a suspension would have on a judge's retirement benefits in approving agreed-upon sanctions. We hold that it did.

I

¶2 Judge Jacqueline McVay has served as a full-time justice of the peace since January 1, 1989. In 1994, Judge

McVay was informally disciplined by the Commission for "being late to court on numerous occasions without explaining the reasons for her tardiness to counsel, litigants, and witnesses who were waiting for trials to begin." In 2003, after receiving other allegations, the Commission reminded Judge McVay to begin court proceedings on time. In 2005, Judge McVay was censured for being habitually tardy. Judge McVay's punctuality improved for a time after her censure, but she arrived late to court on several occasions in 2005 and then began arriving late more often in 2006.

¶3 In May 2006, court staff filed complaints regarding Judge McVay's behavior. The complaints alleged that Judge McVay often blamed clerks for her tardiness, chastised staff in the "public areas," criticized clerks when files were not in order, and improperly interrupted meetings to require administrators, rather than available clerks, to look for files. The Commission filed formal charges against Judge McVay in October 2006. Count I charged Judge McVay with habitual tardiness and Count II charged her with improper judicial demeanor related to her treatment of staff.

¶4 Judge McVay and disciplinary counsel subsequently submitted an agreement to the Commission's hearing panel. As part of the agreement, Judge McVay conditionally admitted that her habitual tardiness violated Code of Judicial Conduct, Ariz.

R. Sup. Ct. 81, Canons 1(A) ("A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so the integrity . . . of the judiciary will be preserved."), 3(B)(8) ("A judge shall dispose of all judicial matters promptly, efficiently and fairly."), and 3(C)(1) ("A judge shall diligently discharge the judge's administrative responsibilities . . . and maintain professional competence in judicial administration . . . ."). Furthermore, she conditionally admitted that her absence from court during court business hours violated Canon 3(A) ("The judicial duties of a judge take precedence over all the judge's other activities."). She also conditionally admitted that by not reforming her behavior in response to previous discipline and censure she violated Canons 1 (requiring that "[a] judge shall uphold the integrity . . . of the judiciary"), 3 (requiring that "[a] judge shall perform the duties of judicial office . . . diligently"), and 3(C)(1). She agreed that her habitual tardiness constituted "conduct prejudicial to the administration of justice that brings the judicial office into disrepute," under Article 6.1, Section 4, of the Arizona Constitution. In addition, she conditionally admitted that several staff members requested transfers or left their employment in part because of her behavior. Consequently, Judge McVay also conditionally admitted that her treatment of

staff violated Canons 1(A) and 3(B)(4) ("A judge shall be patient, dignified and courteous to . . . [those] with whom the judge deals in an official capacity . . . ."). Under the agreement, the Commission would, in part, require Judge McVay to pay a fine of \$6,300;<sup>1</sup> she also agreed to "a two-month reassignment to court duties to be determined by the Maricopa County presiding judge" and to attend courses "in time management and . . . human resources management."

¶15 The hearing panel initially "questioned the appropriateness of the proposed sanction" in light of Judge McVay's prior disciplinary record and the seriousness of the charges. Judge McVay's counsel "explained that he had determined after contacting the Elected Officials Retirement Fund that . . . if she were suspended without pay for two months, [she] would suffer a continuous financial loss in retirement that would greatly exceed the amount of compensation that would be lost as a result of suspension." After further

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<sup>1</sup> The Commission believes, incorrectly, that the fine represents two months of Judge McVay's salary; it considered the fine an additional formal sanction under Rule of the Commission on Judicial Conduct 18(e). Rule 18(e) provides that "[t]he commission may recommend the imposition of other formal sanctions consistent with these rules, including, but not limited to, the assessment of attorney fees and costs." We do not decide in this case, given Judge McVay's consent to imposition of the fine, whether the Commission would have the power under Rule 18(e) to impose a fine on a non-consenting judge.

deliberations, the panel unanimously agreed to accept an amended agreement that incorporated additional provisions, the most significant being that Judge McVay would agree to retire at the end of her term in December 2008.

¶6 Shortly thereafter, the parties filed an amended agreement containing the additional provisions. The hearing panel, through the presiding member, accepted the amended agreement and submitted its recommendation to this Court. The recommendation stated that "the hearing panel observed that [Judge McVay's] 2004 censure<sup>[2]</sup> would justify a recommendation for a suspension but acknowledged, after discussing the matter with both counsel, that such a suspension would disproportionately affect [Judge McVay's] retirement at the conclusion of her current term of office."<sup>3</sup>

¶7 Both parties waived their right to object to the hearing panel's recommendation and their right to petition this Court for modification or rejection of the recommendation. See R. Comm'n Judicial Conduct 29(a). We have jurisdiction under

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<sup>2</sup> The reference to 2004 is a mistake. Although a complaint had been filed in 2004 charging Judge McVay with tardiness, this Court censured Judge McVay for those charges in March 2005.

<sup>3</sup> The amended agreement stated that the Commission would have recommended a suspension but for her "long and faithful service to the judiciary in her 18 years of dedicated and productive service." The Commission's recommendation, however, made no reference to Judge McVay's service in deciding that censure and a fine was an appropriate sanction.



Article 6.1, Sections 4, 5, of the Arizona Constitution and Rule 29(a) of the Rules of the Commission on Judicial Conduct.<sup>4</sup>

## II

¶18 Because Judge McVay had been censured in 2005 for conduct similar to that charged here, the hearing panel initially considered suspending her for two months. The Commission's recommendation and the supplemental briefs of both parties acknowledge that the primary reason Judge McVay was not suspended was because of the adverse effect on her retirement benefits. Absent a suspension, at the end of Judge McVay's current term she will be eligible to receive her full retirement benefits for twenty years of judicial service.

¶19 It was improper for the Commission to consider collateral financial consequences in determining an appropriate

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<sup>4</sup> This Court may not exercise sua sponte review when the Commission on Judicial Conduct recommends censure alone. R. Comm'n Judicial Conduct 29(a) ("A recommendation of censure shall be final unless the judge or disciplinary counsel files a petition to modify or reject the recommendation as provided in paragraph (c)."). This Court does have the authority to review "[a]ll other recommendations for formal sanctions" on its own motion. *Id.* In addition to censure, the Commission recommended that Judge McVay pay a fine, which it viewed as a formal sanction under Rule 18(e). We therefore exercise sua sponte review of the entire recommendation, as the reviewable sanction is inseparable from censure. *Cf. In re Bemis*, 189 Ariz. 119, 122, 938 P.2d 1120, 1123 (1997) (holding in an attorney discipline case that because a probation order, a normally non-reviewable sanction, was recommended in conjunction with a censure, a reviewable sanction, this Court could review both sanctions as they were inseparable).

sanction. "[O]ur goal in imposing sanctions is to protect the public and foster judicial integrity - not to punish." *In re Lorona*, 178 Ariz. 562, 567, 875 P.2d 795, 800 (1994) (citing *In re Haddad*, 128 Ariz. 490, 492, 627 P.2d 221, 223 (1981)); see also R. Comm'n Judicial Conduct 5.<sup>5</sup> Taking into account the financial impact that a suspension would have on a judge would not "serve the objective of guarding the public's interest."<sup>6</sup> *In re Goodfarb*, 179 Ariz. 400, 403, 880 P.2d 620, 623 (1994). If financial consequences were permitted to be considered in determining sanctions for judicial misconduct, many judges could avoid appropriate sanctions. The Commission, and this Court, must be guided by the goals of protecting the public and fostering judicial integrity, and not the collateral consequences a sanction may have on a judge. Therefore, in

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<sup>5</sup> Rule 5 provides in part the following:

The purpose of the judicial discipline . . . system is to protect the public and to maintain high standards for the judiciary and the administration of justice. Any disciplinary remedy or sanction imposed shall be sufficient to restore and maintain the dignity and honor of the position and to protect the public by assuring that the judge will refrain from similar acts of misconduct in the future.

<sup>6</sup> In conjunction with lawyer discipline, we have similarly held that "[w]e do not consider the nature of the lawyer's practice, the effect on the lawyer's livelihood, or the level of pain inflicted when determining the appropriate sanction." *In re Scholl*, 200 Ariz. 222, 224, ¶ 10, 25 P.3d 710, 712 (2001) (citing *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567

recommending censure and fine, the Commission improperly considered the financial consequences a suspension would have on Judge McVay's retirement benefits.

### III

¶10 In the amended agreement, Judge McVay admitted the facts on the condition that the identified sanctions would be imposed. Because we reject the Commission's recommendation, the agreement's terms preclude us from using the conditionally admitted facts to impose a sanction that we would consider appropriate. Accordingly, we remand this matter to the Commission for further proceedings.

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Michael D. Ryan, Justice

CONCURRING:

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Ruth V. McGregor, Chief Justice

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Rebecca White Berch, Vice Chief Justice

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Andrew D. Hurwitz, Justice

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W. Scott Bales, Justice

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(1994)). We see no reason to treat judicial officers differently.

**FILED**

**DEC 26 2006**

Arizona Commission on Judicial Conduct  
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Phoenix, AZ 85007  
Telephone: (602) 452-3200  
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ARIZONA COMMISSION ON  
JUDICIAL CONDUCT

**STATE OF ARIZONA**  
**COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning Judge	)	
	)	Supreme Court No.
<b>JACQUELINE MCVAY</b>	)	
Northeast Phoenix Justice Court	)	Commission Case No. 06-181
Maricopa County	)	
State of Arizona	)	<b>RECOMMENDATION</b>
Respondent	)	

On October 18, 2006, the Commission on Judicial Conduct ("Commission") filed a Statement of Charges against Justice of the Peace Jacqueline McVay ("Respondent") based on a finding of reasonable cause by a three-member panel assigned to oversee the investigation in this case. On the same date, the chairperson of the Commission appointed an eight-member hearing panel to hear and take evidence in the case and designated the undersigned as the presiding member of the panel.

On December 14, 2006, Respondent and Disciplinary Counsel submitted an Agreement for Stipulated Censure ("stipulation") containing a waiver of Respondent's right to appeal and all other procedural rights set forth in Rule 29 of the Rules of the Commission on Judicial Conduct.

On December 15, 2006, the hearing panel met telephonically to consider the stipulation and proposed amendments to the stipulation presented jointly by counsel. The hearing panel reviewed the admissions in the stipulation and discussed the amended sanction, which included a censure under Rule 18(a) and other formal sanctions under Rule 18(e).

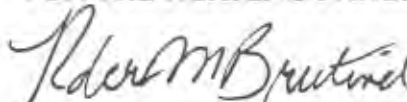
During its deliberations, the hearing panel observed that the Respondent's 2004 censure would justify a recommendation for a suspension but acknowledged, after discussing the matter with both counsel, that such a suspension would disproportionately affect Respondent's retirement at the conclusion of her current term of office. At the conclusion of the meeting, the hearing panel voted unanimously to approve the proposed amendments to the stipulation and authorized the presiding member to review and accept a final stipulation prepared by counsel without further review by the panel itself.

On December 18, 2006, Disciplinary Counsel and Respondent's counsel jointly submitted the attached Amended Agreement for Stipulated Censure, which the undersigned presiding member has reviewed and accepted on behalf of the hearing panel in an order dated December 20, 2006.

In full accordance with the terms and conditions of the Amended Agreement for Stipulated Censure, which are incorporated herein by reference, the hearing panel recommends to the Arizona Supreme Court that Respondent be publicly censured, reassigned to another court for a period of two months and fined as set forth in the stipulation; that the parties pay their own costs and attorneys' fees; and that the parties comply with all other conditions set forth in the stipulated agreement.

RESPECTFULLY SUBMITTED this 26th day of December 2006.

FOR THE HEARING PANEL



---

Hon. Robert M. Brutinel  
Presiding Member of the Hearing Panel

Copies of this pleading were delivered via fax  
and mail this 26th day of December 2006 to:

A. Melvin McDonald, Respondent's Counsel  
Jones, Skelton & Hochuli, P.L.C.  
2901 N. Central Avenue, Suite 800  
Phoenix, AZ 85012

Linda Haynes  
Commission on Judicial Conduct  
1501 W. Washington Street, Suite 229  
Phoenix, Arizona 85007

By: Linda Starks  
Administrative Assistant

Arizona Commission on Judicial Conduct  
1501 West Washington Street, Suite 229  
Phoenix, AZ 85007  
Telephone: (602) 452-3200  
Facsimile: (602) 452-3201

**FILED**

**DEC 18 2006**

ARIZONA COMMISSION ON  
JUDICIAL CONDUCT

**STATE OF ARIZONA  
COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning Judge	)	
	)	Case No. 06-181
JACQUELINE B. McVAY	)	
Dreamy Draw Court	)	<b>AMENDED AGREEMENT</b>
	)	<b>FOR</b>
Maricopa County	)	<b>STIPULATED CENSURE</b>
State of Arizona	)	
Respondent	)	

---

Judge Jacqueline B. McVay ("Respondent") and Linda Haynes, Disciplinary Counsel for the Commission on Judicial Conduct ("Commission"), hereby submit the following proposed resolution of this case pursuant to Rule 30 of the Rules of the Commission on Judicial Conduct ("Rules").

**AGREEMENT**

1. The Commission has jurisdiction over these matters pursuant to Article 6.1 of the Arizona Constitution.

2. Respondent has served as a full-time justice of the peace in the Northeast Phoenix Justice Court since January 1, 1989. In the fall of 2005, the court was collocated to the Northeast Regional Court Center and renamed "Dreamy Draw." Respondent was serving in her capacity as a justice of the peace at all times relevant to the allegations contained herein.



3. As a justice of the peace, Respondent is and has been subject to all provisions of the Code of Judicial Conduct (CJC) as set forth in Supreme Court Rule 81.

#### **BACKGROUND**

4. On October 18, 2006, Disciplinary Counsel filed a formal Statement of Charges against Respondent after a duly appointed investigative panel found reasonable cause to commence formal proceedings.

#### **MUTUAL CONSIDERATION**

5. Respondent admits committing the acts of judicial misconduct and corresponding ethical violations set forth below. In consideration thereof, the Commission shall dismiss any allegations not specifically referred to in this agreement. The dismissal of charges by the Commission should not be construed as a comment as to whether there was sufficient evidence to prove those allegations by clear and convincing evidence.

#### **MATERIAL FACTS**

6. Respondent admits that she was disciplined by the Commission in 1994, when she was criticized for being late to court. In 2003 she was reminded by the Commission in a written letter to begin court proceedings on time. In 2004 she was censured by the Supreme Court for being habitually tardy.

7. The parties agree that after the 2004 public censure was issued, her punctuality improved; however, after a few months, she did not arrive when her calendar was scheduled to begin. These late arrivals occurred on several occasions in the years 2004 and 2005.

8. Respondent admits that in the spring of 2006, after the collocation was completed, she began to arrive late in the courtroom, between five and eighteen minutes after her calendar was scheduled to begin. While tardiness complaints against Respondent from attorneys and litigants significantly dropped after her 2004 censure, the parties agree that the absence of complaints did not justify or excuse arriving late for her cases almost 20 percent of the time, given the censure and her prior disciplinary warnings.

9. Respondent admits that in May of 2006, complaints were filed against her by several members of the collocated staff alleging that she often blamed the clerks when she was late taking the bench. She at times claimed that the delay was caused by incomplete and lost files attributable to the collocation. The staff members complained that Respondent at times verbally chastised staff in the administrative area, interrupted staff meetings to require administrators to look for files when clerks were available to help, and at times criticized clerks when files were not in order. While some staff are committed to Judge McVay and have expressed a desire to work with her on a permanent basis, others dislike her and do not want to work for her.

10. Respondent admits that beginning in April 2006, several staff members who worked in the collocated facility and had worked with or were assigned to Respondent requested transfers or left their employment indicating that at least one reason for leaving was Respondent's treatment of the clerical staff. While a number of staff respect Respondent and have requested to work for her directly, Respondent acknowledges that several clerks expressing strong sentiments against working for her is unacceptable and reflects that she has fallen short of her responsibilities of being patient and courteous with staff.

## ADMISSIONS CONCERNING CODE OF JUDICIAL CONDUCT

11. Respondent admits that her continuing tardiness violated Code of Judicial Conduct Canons 1A ("A judge must maintain, enforce and personally observe high standards of conduct"), 3C(1) ("A judge shall diligently discharge [Respondent's] administrative responsibilities . . . and maintain professional competence in judicial administration . . ."), 3B(8) ("A judge shall dispose of all judicial matters promptly, efficiently and fairly."). By being absent from the court during court business hours, Respondent violated Canon 3A ("[T]he judicial duties of a judge take precedence over all the judge's other activities.").

12. Respondent admits that by not complying with the Commission's warnings and not sufficiently modifying her behavior after receiving a censure from the supreme court, Respondent violated Canon 1 ("A judge shall uphold the integrity . . . of the judiciary"), Canon 3 ("A judge shall perform the duties of judicial office . . . diligently"), and Canon 3C(1) ("A judge shall diligently discharge the judge's administrative responsibilities . . .").

13. Respondent agrees that tardiness by a judge constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of Article 6.1 § 4 of the Arizona Constitution.

14. Respondent admits that by criticizing her staff in front of others, she violated Canon 1A, which states: "A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved," and Canon 3B(4),

which requires a judge to be "patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others."

15. The parties agree that Respondent is a productive Justice of the Peace who has been responsible for and resolved approximately 250,000 cases during her 18-year judicial career.

#### **AGREED UPON SANCTION**

16. Respondent agrees that a censure, a two-month reassignment to court duties to be determined by the Maricopa County presiding judge, and a fine in the amount of \$6,300.00 (six thousand three hundred dollars), payable to Maricopa County, is an appropriate sanction for her misconduct. Respondent further agrees to attend and complete a course in time management and a course in human resources management and to be subject to periodic monitoring of the electronic badge entry system that reflects the times Respondent enters and exits the courthouse.

17. Since her reassignment pending the resolution of this complaint, Respondent, in order to address Commission concerns, has attended, or will attend, the following classes:

a. Respondent has completed "Diversity in Arizona's Courts" (August 23, 2006), taught by Gabe Goltz, Maricopa County Training Department, 3 hour class.

b. Respondent has completed "The Colors of Consciousness: Internal Dimensions of Global Culture" (November 16, 2006), taught by Joe Legander (Durango Juvenile Court), 2 hour class.

c. Respondent has completed "Humor and Laughter in the Workplace" (November 7, 2006), taught by Ruth Janna, 301 West Jefferson, 3 hour class.

d. Respondent has completed "Finding Forgiveness" (December 14, 2006), provided by the ASU School of Extended Education, 1 hour class.

e. Respondent has completed "Laugh and Live Happier, P.L.A.Y.S. for Life" (December 13, 2006), taught by Ruth Janna, ASU School of Extended Education, 1 hour class.

f. Respondent requested the Maricopa County Training Department to provide punctuality training. The county responded by scheduling a three-hour course entitled, "Never Be Late Again." Respondent will attend on December 21, 2006.

18. When Respondent's two-month reassignment is completed, Respondent will return to her duties as Justice of the Peace for the Dreamy Draw Precinct.

19. Respondent has informed the Commission that on December 31, 2008, she will have completed twenty years of judicial service as a justice of the peace. Respondent and her family had decided prior to this investigation that she would retire as justice of the peace at the end of her current term in December of 2008. Respondent will not seek re-election as a justice of the peace in or after 2008 and will not accept an appointment to serve in any judicial capacity, including as a *pro tem*, after her retirement.

#### **OTHER TERMS AND CONDITIONS**

20. This agreement, if accepted by the hearing panel, fully resolves all issues raised in the Statement of Charges and may be used as evidence in later proceedings in accordance with the Commission's Rules. If the hearing panel does not accept this

agreement as a full resolution, then the admissions made by Respondent are withdrawn, and the matter will be set for hearing without use of this agreement.

21. The Commission would have recommended suspension as a sanction against Respondent; however, based on Respondent's long and faithful service to the judiciary in her 18 years of dedicated and productive service and Respondent's willingness to attend classes and receive training regarding the issues raised in the complaint, the recommended sanction has been mitigated to a censure, a fine payable to Maricopa County, and a two-month reassignment.

22. Pursuant to Commission Rule 28(a), both parties waive their right to object to the hearing panel's proposed recommendations and their right to appeal the charges at issue in this matter, including the appeal procedures set out in Commission Rule 29.

23. Both parties agree not to make any statements to the press that are contrary to the terms of this agreement.

24. Both parties will pay their own costs and attorneys' fees associated with this case.

25. Respondent clearly understands the terms and conditions of this agreement and fully agrees with its terms.

26. This agreement constitutes the complete understanding between the parties.

**SUBMITTED** this \_\_\_\_th day of December, 2006.

\_\_\_\_\_  
Jacqueline B. McVay  
Respondent

\_\_\_\_\_  
Date

\_\_\_\_\_  
A. Melvin McDonald, Jr.  
Counsel for Respondent

\_\_\_\_\_  
Date

Linda Haynes  
Linda Haynes, Disciplinary Counsel  
Commission on Judicial Conduct

12-18-06  
Date



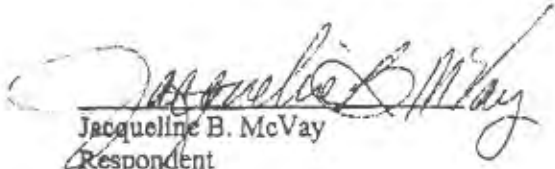
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COMM. ON JUDICIAL CONDUCT

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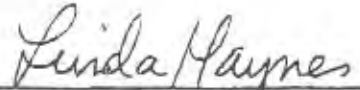
SUBMITTED this \_\_\_\_th day of December, 2006.

  
Jacqueline B. McVay  
Respondent

12-18-06  
Date

\_\_\_\_\_  
A. Melvin McDonald, Jr.  
Counsel for Respondent

\_\_\_\_\_  
Date

  
Linda Haynes, Disciplinary Counsel  
Commission on Judicial Conduct

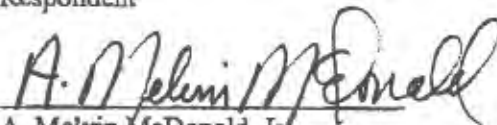
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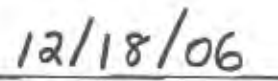
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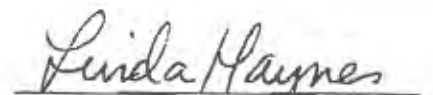
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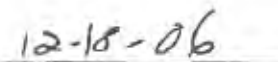
\_\_\_\_\_  
Jacqueline B. McVay  
Respondent

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
A. Melvin McDonald, Jr.  
Counsel for Respondent

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Linda Haynes, Disciplinary Counsel  
Commission on Judicial Conduct

  
\_\_\_\_\_  
Date

Linda Haynes  
Disciplinary Counsel (Bar #12178)  
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Telephone: (602) 542-5200

**FILED**

OCT 18 2006

ARIZONA COMMISSION ON  
JUDICIAL CONDUCT

**STATE OF ARIZONA**  
**COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning Judge	)	
	)	
<b>JACQUELINE MCVAY</b>	)	Case No. 06-181
Northeast Phoenix Justice Court	)	
Maricopa County	)	<b>STATEMENT OF CHARGES</b>
State of Arizona	)	
Respondent	)	
	)	

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An investigative panel composed of members of the Commission on Judicial Conduct (Commission) has determined that there is reasonable cause to commence formal proceedings against the Respondent, Judge Jacqueline McVay, for misconduct in office. This statement of charges sets forth the jurisdiction of the Commission and specifies the nature of the alleged misconduct.

**JURISDICTION**

1. The Commission has jurisdiction of this matter pursuant to Article 6.1 § 4 of the Arizona Constitution.
2. This Statement of Charges is filed pursuant to Rule 24(a) of the Rules of the Commission on Judicial Conduct (Commission Rules).
3. Respondent has served as a full-time justice of the peace in the Northeast Phoenix Justice Court since June 1, 1989. In October or November of 2005, the court was collocated to

the Northeast Regional Court Center and renamed "Dreamy Draw." Respondent was serving in her capacity as a justice of the peace at all times relevant to the allegations contained herein.

4. As a justice of the peace, Respondent is and has been subject to all provisions of the Code of Judicial Conduct (CJC) as set forth in Supreme Court Rule 81.

### **COUNT I HABITUAL TARDINESS**

5. Respondent continues to be habitually tardy in the conduct of court business. Respondent's lateness is a constant source of inconvenience and injustice, as evidenced by several recent complaints filed by judicial staff with the Maricopa County Courts Human Resources Division (HRD) and by statements of court staff and attorneys.

6. Respondent's lateness is part of a pattern that began in 1994 when Respondent was reprimanded in Case 94-196 for being late to court on numerous occasions without explaining the reasons for her tardiness to counsel, litigants, and witnesses who were waiting for trials to begin. In that case, the Commission ordered the Respondent to establish clearly defined hours for commencing trials and to start trials at the stated times.

7. In 2000, after a second complaint about Respondent's continuing tardiness (Case 00-183), the Commission advised Respondent to be patient, dignified, and courteous to attorneys and to accord attorneys the right to be heard.

8. In 2003, Respondent was again reminded to begin court on time in Case 03-046, although the underlying case was dismissed because the allegations were too old.

9. On March 22, 2005, Respondent was censured by the Supreme Court for being habitually tardy, continuing a pattern for which she had been reprimanded, advised, and

reminded to stop. The complaint also alleged that Respondent was intentionally and continually absent or late, despite the commission's strong warnings, an administrative order requiring minimal attendance, and a requirement that judges check in with the court every two hours.

10. The Maricopa County Limited Jurisdiction Courts Administration, (MCLJCA), which administered court personnel prior to July 1, 2006, issued an administrative order on April 23, 2004, that stated: "judges are expected to be in their court." An accompanying policy mandated that access to a judge must be provided to the public on any emergency matter within two hours of a citizen filing a petition. In addition, judges were required to check in with their courts at least every two hours.

11. After the administrative order was in effect and after Respondent was publicly censured for tardiness in March 2005, Respondent came to work on time, but after a few weeks, her punctuality declined and she resumed her habitual behavior. Respondent was not present on Fridays unless she had a wedding in the afternoon. Respondent continued to request that staff call her cell phone if litigants were waiting in the courtroom. She would promise to be there in a few minutes, but would take up to an hour and a half to arrive. Respondent would chastise staff if they sent petitioners for orders of protection to other courts so that they would not have to wait for her to return to the courthouse. She instructed court staff to tell litigants to return at 4:00 p.m. to get their orders, even if they had arrived in the morning. Respondent was also between 10 and 30 minutes late for scheduled court appearances on many occasions. This tardy behavior continued for approximately six months until the move to the Northeast Regional Court Center.

12. In November 2005, after the collocation was completed and Respondent was in a courthouse that combined the work space of all court staff (which made her attendance more noticeable), she again improved her timeliness for a short period; however, beginning in the spring of 2006, Respondent began to arrive late in the courtroom and to blame her tardiness on staff errors and missing files that were caused by the collocation of the courts. She asserted to staff and fellow judges that she was in the building, waiting to be called to the bench, when she was actually not in the courthouse.

13. Respondent and other court employees were provided with electronic "key cards" that provide access to the parking lot and the court building. Records kept on the use of the cards demonstrate that between April 10 to June 9, 2006, on days when court cases were scheduled in her court, Respondent was late over 25 percent of the time for five or more minutes. The average delay between the calendar starting time and Respondent coming into the building was 18 minutes.

14. Between December 2005 and February 2006, Respondent told her presiding justice of the peace that he hadn't "figured it out yet," that "the real purpose of being a justice of the peace is to see how little time you can spend at the courthouse and how much time you can have for yourself."

15. By her habitual tardiness, Respondent violated CJC Canons 1A ("A judge must maintain, enforce and personally observe high standards of conduct"), 3C(1) ("A judge shall diligently discharge [Respondent's] administrative responsibilities . . . and maintain professional competence in judicial administration . . ."), 3B(8) ("A judge shall dispose of all judicial matters promptly, efficiently and fairly."), and 3B(4) ("A judge must be patient, dignified and courteous

to litigants . . . lawyers, and others with whom the judge deals in an official capacity . . ."). By habitually being at other locations during court business hours, Respondent violated Canon 3A ("[T]he judicial duties of a judge take precedence over all the judge's other activities.").

16. By refusing to comply with the Commission's warnings or to modify her behavior after receiving a censure from the supreme court, Respondent violated Canons 1 ("A judge shall uphold the integrity . . . of the judiciary"), 3 ("A judge shall perform the duties of judicial office . . . diligently"), and 3C(1) ("A judge shall diligently discharge the judge's administrative responsibilities . . .").

17. Habitual tardiness by a judge constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of Article 6.1 § 4 of the Arizona Constitution. (See also *In Re Matter of Braun*, 180 Ariz. 240, 833 P. 2d, 997 (1994)).

18. Closed files pertaining to discipline of Respondent may be referred to and used by the Commission or by Respondent for the purpose of determining the severity of the sanction, a pattern of misconduct, or exoneration of the judge pursuant to Commission Rule 22(e).

## **COUNT II IMPROPER JUDICIAL Demeanor**

19. In May of 2006, HRD began receiving complaints from staff members working at the Northeast Regional Court Center, a collocated courthouse where justices of the peace are located, including Respondent. The resulting HRD investigation revealed that Respondent repeatedly blamed her staff when she was late taking the bench, claiming that the delay was caused by incomplete and lost files attributable to the collocation, rather than admitting she came into the



courthouse after the calendar began. The HRD report alleged that Respondent treated the staff in a demeaning manner by verbally chastizing staff in the public areas, interrupting staff meetings to require administrators to look for files when clerks were available to help, berating clerks when files were not in order, and continually entering the visible, public area in her judicial robes while demanding immediate assistance.

20. On July 10, 2006, the presiding superior court judge filed a complaint against Respondent with the Commission and an investigation was instigated.

21. The Commission learned that on March 15, 2006, Chief Justice MacGregor issued an Administrative Order restructuring court administration and transferring supervisory authority from the MCLJCA back to the individual justices of the peace. This change was to become effective July 1, 2006. Respondent elected to separate her collocated staff from the other two justice courts at Northeast.

22. Between August 23, 2005 and October 23, 2005, prior to the move to the Northeast Regional Center, the deputy clerk assigned to the old courthouse said Respondent continued to instruct the clerical staff to tell people seeking orders of protection that the judge would be in at 4:00 p.m. to issue their orders. When the new staff tried to implement an Administrative Policy (issued in April of 2004) that required judges to contact the court every two hours to see if litigants were waiting, Respondent began to call in again, but only spoke to certain clerks, who then would tell petitioners to return at 4:00 p.m.

23. After the move to the Northeast Regional Court Center in October of 2005, Respondent frequently arrived at court late and would enter the clerical area, demanding

immediate assistance and indicating that she had been waiting for staff or files. There were several incidents where the staff felt intimidated or demeaned by Respondent:

a. On May 4, 2006, an attorney needed to file a motion and no forms were in the courtroom. After the bailiff directed the attorney to get the forms at the front counter, Respondent said, "When I ask for motions forms I expect you to get them. I don't run my court this way, I always had motion forms in the courtroom."

b. On one occasion between August 23 and October 23, 2005, Respondent was heard to say to a senior clerk, "And you've been with us for how long?" This was said in a demeaning manner in a public area and could be heard by the public and by the clerical staff. At the old courthouse, in the fall of 2005, Respondent publicly remarked, "I haven't had my lunch yet, but I'll bet my court manager has," in a demeaning manner. After the move to the new courthouse, Respondent stopped a clerk in the hall and said, "Since you're not busy . . ." and proceeded to have her move some boxes, thereby assuming the clerk had nothing to do. In another instance, after the change in management of court staff was announced, Respondent stated in an extremely sarcastic manner, "Feeling a little disempowered today?" to one of the court managers whose job was in jeopardy. On one occasion at the Northeast Court Center, the three deputy managers (one for each of the collocated courts) were present and visible in the immediate area when Respondent asked where the managers were, implying that the deputies were not adequate to answer her question. They said, "They are in a meeting, can we help you?" Respondent said that she needed a supervisor and one of the deputies said, "We are all here and we are all supervisors."

c. On July 24, 2006, a clerk was looking for a "red file" containing a time-sensitive motion that needed to be ruled on. The red color alerts staff and judges that the matter is high priority. The clerk found the file in a hallway inbox and placed it on Respondent's desk at 10:00 a.m. At 1:30, the clerk checked the hallway basket and observed that the file was not there. Respondent then asked the clerk who gave her permission to look in the judge's out basket and informed the clerk that she had "just received" the file, indicating that it was not on her desk earlier.

24. On May 11, 2006, Respondent observed her lead clerk speaking with one of the court managers, and demanded to know what had been said. After learning about the exchange, Respondent asked the clerk why she had not come to Respondent with the issue. When the clerk explained that the management team members were her supervisors, Respondent said, "Only for a few months." Respondent then instructed the clerk that she was no longer permitted to attend management meetings.

25. Beginning in April 2006, after the order restructuring the court was issued, five clerks who had worked with or were assigned to the Respondent's precinct requested transfers or left their employment:

a. The lead clerk for Respondent's court, who had worked with her since the collocation, filed a complaint with HRD against Respondent on May 11, 2006, after being ordered not to attend managers meetings. The clerk quit on June 5, 2006, stating in her resignation letter, "She [Respondent] has stressed me out to the point that I decided to look for a different job to get away from her . . . . I couldn't take Judge McVay, and her unethical ways of handling her clerks."

b. On April 20, 2006, a senior clerk requested a transfer out of Respondent's court based on the changes in the court structure and on Respondent's failure to even acknowledge the clerk's existence despite the clerk having been Respondent's employee since October of 2005.

c. A clerk assigned to the new Northeast Regional Center learned that when the courts would separate on July 1, 2006, she would be working with the Respondent. She later cited this as one of the reasons she resigned from her position on April 14, 2006.

d. On May 4, 2006, Respondent's bailiff filed a complaint stating that she had asked to be transferred away from Respondent three times because Respondent treated her demeaningly, stating that the "judge has made me feel inadequate."

e. The acting court manager for Respondent's court complained to HRD on May 12, 2006, and stated, "I believe that working for Judge McVay will put me in a hostile work environment and I will suffer some type of retaliation."

26. By demeaning and berating her staff in public, respondent violated Canon 1A, which states: "A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved." Blaming her staff for her own tardiness demonstrates a grave lack of integrity in dealing with others. Respondent's actions towards her staff also violated Canon 3B(4), which requires a judge to be "patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others . . . ."

27. Respondent has not presided over a jury trial, despite being a justice of the peace for 17 years. In each incidence when a jury trial is scheduled in her precinct, a *pro tem* judge covers the case for her at county expense. By assigning her duty to preside over her own cases to a *pro*

*tem* judge, Respondent has failed to administer the operations of her court efficiently and fairly in violation of Canon 3B(8), ("A judge shall dispose of all judicial matters promptly, efficiently and fairly.") The commentary to this canon states, "Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public" [ . . . and . . . ] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission." Canon 3B(1) states "A judge to whom administrative responsibilities are assigned should diligently discharge his administrative responsibilities . . . ."

### CONCLUSION

28. Respondent's actions, taken together, demonstrate a pattern of demeaning and degrading behavior towards court staff both prior to and after the court collocation. Respondent has been advised, warned, counseled and censured, yet she persists in arriving at the courthouse late, and she continues to blame her misconduct on other people. Respondent intentionally ignores administrative orders and appears to think she is immune from any type of discipline for her failure to control her own actions. Complying with the judicial canons requires a willing attitude and a desire to be the best judge possible given each person's personality and abilities. Respondent has clearly shown that she is only interested in following the canons when she is under constant scrutiny or under investigation, and even at those times, she has difficulty with punctuality and genuine courtesy.

29. Each of the charges alleged in this pleading constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of Rule 6, as well as Article 6.1 § 4 of the Arizona Constitution. Additionally, each count violates

Canon 1A, which requires a judge to maintain, enforce and personally observe high standards of conduct and to uphold the integrity of the judiciary, and Canon 2A ("A judge shall . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"). Article 6.1 § 4 of the Arizona Constitution provides that the Supreme Court may censure, suspend, or remove a judge for conduct that brings his judicial office into disrepute.

WHEREFORE, the Commission, upon conclusion of a hearing and a finding of good cause, may recommend to the Supreme Court that Respondent be publicly censured, suspended or removed from judicial office, and that the Court grant other relief as may be deemed appropriate.

Dated this 18th day of October, 2006.

**COMMISSION ON JUDICIAL CONDUCT**

  
Linda Haynes  
Disciplinary Counsel

ORIGINAL of this pleading filed  
this 18th day of October 2006, with:

The Arizona Commission on Judicial Conduct  
1501 W. Washington St., Suite 229  
Phoenix, AZ 85007

Copy of this pleading filed  
this 18th day of October 2006,  
by personal service to:

A. Melvin McDonald  
Jones, Skelton & Hochuli, P.L.C.  
2901 N. Central Avenue, Suite 800  
Phoenix, AZ 85012



1 A. Melvin McDonald, Bar #002298  
2 JONES, SKELTON & HOCHULI, P.L.C.  
3 2901 North Central Avenue, Suite 800  
Phoenix, Arizona 85012  
Telephone: (602) 263-1747

4 Attorneys for Respondent

**FILED**

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ARIZONA COMMISSION ON  
JUDICIAL CONDUCT

5  
6 **STATE OF ARIZONA**  
7 **COMMISSION ON JUDICIAL CONDUCT**

8 Inquiry concerning Judge

Case No. 06-181

9 JACQUELINE MCVAY  
Northeast Phoenix Justice Court  
10 Maricopa County  
State of Arizona.

**ANSWER TO STATEMENT OF  
CHARGES**

11 Respondent.

12  
13 COMES NOW Jacqueline McVay, by and through her counsel undersigned,  
14 and respectfully answers the Statement of Charges as follows:

15 **JURISDICTION**

16 1. Respondent admits the allegations in Paragraphs 1, 2, and 4. In answering  
17 Paragraph 3, Respondent has been a Justice of the Peace since January 1, 1989, not since  
18 June 1, 1989 as alleged in paragraph 3 of the Statement of Charges.

19 **COUNT I**

20 **HABITUAL TARDINESS**

21 2. As to paragraph 5, Respondent denies that she is habitually tardy in the  
22 conduct of court business. Respondent further denies that she is a constant source of  
23 inconvenience in her justice court and alleges that any recent complaints filed by judicial  
24 court staff or attorneys is far outweighed by other court staff or attorneys who believe  
25 respondent judge is an effective, productive, and highly professional jurist.

26 3. As to Paragraph 6, Respondent denies that this allegation is part of a pattern



1 that began in 1994. Respondent further denies that she was reprimanded in Case No. 94-  
2 196 for tardiness. Respondent admits the remaining portions of paragraph 6.

3 4. In answering Paragraph 7, Respondent is without sufficient information to  
4 admit or deny whether a complaint was filed in 2000 relating to tardiness. The  
5 Commission attorney failed to provide counsel with necessary paperwork documenting  
6 the existence of such a complaint.

7 5. In answering Paragraph 8, Respondent admits that she was reminded in  
8 2003 to begin court on time but maintains that this allegation should be stricken because  
9 the allegations were never substantiated and the charge itself was dismissed. There is  
10 nothing in the historical record to support the claim that Respondent was tardy or it would  
11 have been adjudicated.

12 6. In answering Paragraph 9, Respondent admits that she was censured by the  
13 Supreme Court in 2005. Respondent believes that Paragraph 9, as alleged, is misleading  
14 in that an express stipulation and finding was made that despite her tardiness, the  
15 Commission found that Judge McVay handled approximately 15,000 criminal and civil  
16 cases and 1500 emergency orders of protection and injunction against harassment and that  
17 she had demonstrated a solid record of processing and resolving these cases as she  
18 performed her judicial duties.

19 7. In answering Paragraph 10, the Respondent admits the allegation set forth in  
20 that paragraph.

21 8. In answering Paragraph 11, Respondent is unable to admit or deny the  
22 allegations set forth in Paragraph 11 because the records which serve as the basis for that  
23 allegation have not been produced to the Respondent nor reviewed by her counsel. As a  
24 result, she denies these allegations.

25 9. In answering Paragraph 12, Respondent is unable to admit or deny the  
26 allegations of Paragraph 12 because the documentation upon which the allegation is based

1 has not been provided to the Respondent Judge or her legal counsel. As a result,  
2 respondent denies all allegations in paragraph 12.

3 10. In answering Paragraph 13, Respondent admits that electronic key cards  
4 were provided to her and other court employees. Respondent is unable to admit or deny  
5 the remaining allegations

6 11. In answering Paragraph 14, Respondent denies the allegations in their  
7 entirety.

8 12. In answering Paragraph 15, Respondent denies that she is habitually late.  
9 Even on dates that she may arrive after 8:30, her arrival does not undermine the  
10 administration of her court. Criminal Cases scheduled for 8:30 a.m. rarely can start at  
11 8:30 a.m. in her court because of the necessary attorney meetings and preparation of  
12 paperwork before a case can come before her for hearing. Respondent denies violating  
13 the Canons of Ethics cited in Paragraph 15.

14 13. In answering Paragraph 16, Respondent denies she refused to comply with  
15 the Commission's warnings and maintains that her behavior was modified after receiving  
16 the censure from the Supreme Court, even moving nearer to the courthouse to improve her  
17 on-time record. As a result, she denies violating those Canons cited in Paragraph 16.

18 14. In answering Paragraph 17, Respondent admits that the principle defined by  
19 Paragraph 17 but denies, based on the facts, that that rule applies to her because she is not  
20 habitually late nor does her time of arrival interfere or impede with the administration of  
21 justice or the expeditious processing of her cases.

22 15. In answering Paragraph 18, that particular allegation does not require an  
23 admission or denial. Respondent will seek access to the same closed files.

COUNT II

IMPROPER JUDICIAL DEMEANOR

16. In answering Paragraph 19, respondent is without sufficient knowledge to affirm or deny the receipt by HRD of staff member complaints and therefore denies the same. Respondent Judge denies "repeatedly blaming her staff" or for repeatedly being late in taking the bench. Respondent further alleges that when she was delayed in taking the bench, these delays were frequently caused by incomplete and lost files and calendar errors attributable to the complainants. Respondent denies that she was repeatedly late in taking the bench. Respondent denies treating her staff in a demeaning manner by verbally chastising them in public areas. She further denies interrupting staff meetings to require administrators to look for files when clerks were available. She further denies berating clerks when files were not in order but admits that hundreds of files were in disarray and not in order. Respondent further denies "continually" entering a visible clerical area in her judicial robes while demanding immediate assistance. Respondent maintains that she has every right to wear her robes in a clerical area when searching for files.

17. Respondent admits the allegations set forth in Paragraph 20.

18. Respondent admits the allegations set forth in Paragraph 21.

19. In answering Paragraph 22, Respondent denies the allegations set forth in that paragraph.

20. In answering Paragraph 23, Respondent admits that there were some days where she would arrive at court after 8:30 a.m.; however, arriving after 8:30 would not mean that she arrived at court "late" because of the need for attorney's to negotiate dispositions, prepare paperwork, and have the case ready for respondent's consideration. Respondent denies that she would enter the clerical area "demanding" immediate assistance. Respondent is unable to determine which incidents staff claimed to be intimidated or demeaned by Respondent and therefore denies the allegation. Respondent

1 does admit that there were times that she would be waiting for staff or files but denies that  
2 she was demanding, threatening or intimidating.

3 21. In answering allegation 23(a), Respondent has no memory of the incident  
4 and therefore denies the same. Even if the incident is true, the judge has the right to run  
5 her courtroom the way she desires and has ever right to instruct the bailiff to deliver forms  
6 to the courtroom.

7 22. In answering allegation 23(b), Respondent vehemently denies that the  
8 numerous allegations, even if true, were uttered in a demeaning or condescending manner.  
9 Respondent maintains that it is unfair to take randomly take allegations from employees  
10 who already have shown a predisposition for hostility against Judge McVay and  
11 summarize the unrelated statements into a claim alleging misconduct. Judge McVay  
12 denies all allegations in Paragraph 23(b) and demands strict proof thereof.

13 23. In answering Paragraph 23(c), Respondent judge denies that a red file is  
14 designated as such because it's a matter of high priority. To the contrary, red is the color  
15 of file used for injunction against harassment order of protection. Respondent has no  
16 recollection of the incident in question and therefore denies the same. Respondent further  
17 denies that the allegation has anything to do with judicial demeanor. A judge who has  
18 handled tens of thousands of cases and thousands of orders of protection and orders  
19 against harassment is bound to have isolated instances of displaced files.

20 24. In answering Paragraph 24, Respondent denies the allegation.

21 25. In answering Paragraph 25, Respondent denies the allegations. Contrary to  
22 the allegation, three clerks specifically requested to be assigned to work under Judge  
23 McVay Respondent is without information to respond to the allegation of the lead clerk  
24 and therefore denies the same. If the lead clerk referred to in the complaint was named  
25 Brenda, Brenda gave Judge McVay completely different reasons for leaving her court.

26 26. In answering Paragraph 25(b), Respondent denies the allegation. She had

1 no employee working for her as a senior clerk. At the time of the alleged statement, none  
2 of the 23 elected judges had staff that were under supervision and direction of the Justices  
3 of the Peace.

4 27. In answering Paragraph 25(c), Respondent is without information and  
5 knowledge as to the unnamed clerk who cited Judge McVay as one reason for resigning  
6 and therefore denies the same.

7 28. In answering Paragraph 25(d), Respondent Judge is without information to  
8 admit or deny the claim and therefore denies the same.

9 29. In answering Paragraph 25(e), Respondent is without information to admit  
10 or deny the claim and therefore denies the same and demands strict proof thereof. If such  
11 a statement was made, the respondent will prove that this same court manager warned  
12 Judge McVay that there would be complaints lodged against judges two days after the  
13 Chief Justice announced the return of administrative control to the 23 elected justice  
14 courts. This same court manager has similarly complained against prior judges.

15 30. In answering Paragraph 26, Judge McVay denies that she demeaned or  
16 berated her staff in public. She denies that she violated Canon 1(A). She denies blaming  
17 her staff for her own tardiness and vehemently denies the claim that she demonstrated "a  
18 grave lack of integrity" in dealing with others. She further denies any actions with staff  
19 violated Canon 3(B)(4).

20 31. In answering Paragraph 27, Respondent admits that she has not presided  
21 over a jury trial in the recent past. It is the practice with many justices of the peace who,  
22 like Judge McVay, have staggering case loads, to assign their jury trials to pro tem judges.  
23 In addition, the vast majority of cases scheduled for jury trial do not go to trial. In 2005,  
24 the 23 justice courts in Maricopa County tried only 49 jury trials, an average of two cases  
25 per judge. In 2004, the 23 justice courts tried 70 cases, an average of 3 per judge. In  
26 2000, there were only 23 jury trials for the entire year. Judge McVay would seek out pro



1 tem judges to try these isolated jury trials so that she can manage her staggering 15,000  
2 cases each year. Respondent denies that she has failed to administrate the operations of  
3 her court efficiently and fairly in violation of Canon 3(B)(8). She further denies that she  
4 has not devoted adequate time to judicial duties in violation of Canon 3(B)(1).

### 5 CONCLUSION

6 32. In answering Paragraph 28, Respondent denies that her actions, either  
7 individually or taken together, demonstrate a pattern of demeaning and degrading  
8 behavior towards court staff, both prior to and after the court relocation. Respondent  
9 admits that she's been advised, warned and censured but denies that she persists in  
10 arriving at the courthouse late. Respondent denies that she is guilty of misconduct and  
11 therefore denies that she blames her alleged misconduct on other people. Respondent  
12 denies that she ignores administrative orders and denies that she thinks she is immune  
13 from any type of discipline for her alleged failure to control her actions. Respondent has a  
14 willing attitude and desires to be an outstanding jurist. Respondent denies the allegation  
15 that she is only interested in following the Canons when she is under scrutiny or  
16 investigation.

17 33. In answering Paragraph 29, Respondent denies that those charges alleged in  
18 the pleadings constitute conduct prejudicial to the administration of justice because the  
19 bulk of the allegations are untrue or exaggerated. She denies that these actions bring the  
20 judicial office in disrepute within the meaning of Rule 6, as well as Article 6.1, Section 4  
21 of the Arizona Constitution. She denies that she violates Canon 1(A) and Canon 2(A).  
22 Respondent admits that the Supreme Court may censure, suspend or remove a judge for  
23 conduct that brings her office into disrepute but denies her actions justify a censure.  
24 suspension or removal.

25 WHEREFORE, Respondent, upon the conclusion of any hearing urges the  
26

1 Commission to find an absence of good cause and to reject any recommendation by  
2 disciplinary counsel for the Respondent to be publicly censured, suspended or removed  
3 from judicial office.

#### 4 **AFFIRMATIVE DEFENSES**

##### 5 **Affirmative Defense No. 1**

6 Tardiness in arriving at court, when it has occurred, has not resulted in  
7 delays for litigants and attorneys. The essence of the Commission complaint is that Judge  
8 McVay is not at her court precisely at 8:30 each morning. The evidence will show that  
9 even if true, the alleged 5 to 18 minute late arrivals do not interfere with the efficient  
10 processing of cases or the administration of justice. There are no complaints from  
11 attorneys or litigants regarding Jacqueline McVay since her 2005 censure. Respondent  
12 Judge sold her home to be closer to the new courthouse so that her punctuality would  
13 improve. Attorney's are rarely ready to proceed precisely at 8:30 a.m. because of  
14 necessary paperwork that must be prepared before the start of court.

##### 15 **Affirmative Defense No. 2**

16 In the 2004 agreement with the Commission, the Commission expressly  
17 found that as a Justice of the Peace in the Northeast Phoenix Justice Court, Respondent  
18 annually dealt with approximately 15,000 criminal and civil cases. In addition, she  
19 presided over 1,500 emergency orders of protection and injunctions against harassment.  
20 The Commission expressly stipulated that the Respondent had demonstrated a solid record  
21 of processing and resolving these cases as she performed her judicial duties. Since 2004,  
22 Judge McVay has continued to manage her staggering case load in an exemplary manner.  
23 As a result, the tardiness, where it has occurred, has not undermined the system of justice.  
24 The Judge did heed to the 2004 censure and has improved her punctuality and relations  
25 with staff.



1     **Affirmative Defense No. 3**

2             The allegations by disciplinary counsel are unfairly directed at the arrival  
3     time of Judge Jacqueline McVay. Upon information and belief, Respondent Judge  
4     believes that maintains an on-time record which is equal to that of her fellow justices of  
5     the peace.

6     **Affirmative Defense No. 4**

7             The Respondent Judge maintains that court staff who have worked under  
8     her and litigants who have appeared before her hold her in high esteem. With any  
9     judicial position, there will be detractors. Respondent maintains that the detractors who  
10    have voiced these accusations have in some instances made similar accusations against  
11    other judges and have criticized and condemned Judge McVay for their own  
12    incompetency in managing the Justice Court case system. As a result of the managers'  
13    substandard efforts, their ineptitude in managing case files has created utter chaos in the  
14    court filing system of the Dreamy Draw Precinct. As a result of this mismanagement of  
15    filings, the presiding judge, the honorable Barbara Mundell, has been required to initiate  
16    extensive corrective actions to improve the alarming condition of court files. Rather than  
17    accept responsibility for their poor management of the case files, they have chosen to  
18    avoid blame by pointing the finger at Judge McVay, who justifiably had every right to be  
19    critical of their performance. Because of the complainants management practices, the  
20    three justice courts located at the Northeast Regional Center precinct are having to rectify  
21    an enormous backlog of files. The center has requested approximately 1,000 hours in  
22    overtime help, with costs approximating \$200,000 to rectify the enormous problem  
23    created by the court managers.


24    **Affirmative Defense No. 5**

25             The Respondent maintains that it is grossly unfair for disciplinary counsel to  
26    pick out isolated or remote incidents and to base Count II on isolated complaints from and

1 small percentage of judicial staff. Any jurist who has ever served in either the Superior  
2 Court or the justice courts have encountered incidents where litigants or staff disagree  
3 with court decisions. Respondent believes and maintains, and the evidence will show, that  
4 she is widely respected by other judges, by the litigants, and by the majority of staff who  
5 have worked under her.

6 RESPECTFULLY SUBMITTED this 6th day of November, 2006.

7 JONES, SKELTON & HOCHULI, P.L.C.  
8

9 By   
10 A. Melvin McDonald  
11 2901 North Central Avenue, Suite 800  
12 Phoenix, Arizona 85012  
Attorneys for Respondent Jacqueline  
McVay

13 ORIGINAL of this pleading filed  
this 6th day of November, 2006, with:

14 The Arizona Commission on Judicial Conduct  
15 1501 W. Washington, Suite 229  
Phoenix, AZ 85007

16 COPY of this pleading hand-delivered  
17 this 6th day of November, 2006, to:

18 Linda Haynes  
19 Disciplinary Counsel  
Commission on Judicial Conduct  
20 1501 W. Washington St., #229  
Phoenix, AZ 85007  
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22  
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24  
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