

mony of the witnesses called and having reviewed the records and files herein and having considered the Motion for Reconsideration, finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT & CONCLUSIONS

I

The Honorable Marvin C. Buchanan was at all times relevant to the hearing herein a Judge of the Island County District Court. He initially was appointed to his position in 1974, and he has held that position by election through subsequent terms to the present date. Judge Buchanan has not filed for reelection in 1982.

II

The Island District Court has for several years used as its principal location a courthouse in Oak Harbor, Washington, with satellite locations in Langley and on Camano Island. Judge Buchanan is also the Judge of the Oak Harbor Municipal Court.

III

Judge Buchanan when presiding in court demonstrated competence in the law, displayed good judicial temperament and demeanor and was respectful of those who appeared before him.

IV

Judge Buchanan evidenced certain prejudice in discussions with his staff by deliberately mispronouncing in a deprecatory manner

an attorney's name, referring to the attorney as a "rich, rotten, spoiled Jew" and "a little rich Jew kid". He indicated to the staff that this attorney was not to be treated with the same cooperation as other attorneys; nor did the Judge treat him with the same cooperation as other attorneys.

Conclusion: This conduct constituted a violation of the Code of Judicial Conduct, Canons 1, 2A and 3A(3).

Canon 1.

"An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. . ."

Canon 2 A.

"A Judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 3 A.(3).

"A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control."

V

At the time the fact-finding hearing began, the support staff at the Island District Court consisted of five female clerks. Four of those staff members had been employed in excess of a year and a fifth since March, 1982. Judge Buchanan

expressed satisfaction with the clerical performance of his staff until he learned of the filing of this complaint. Prior to the conclusion of the fact-finding hearing herein, two of the staff members, Karen Johnson and Karen Hise, were discharged by Judge Buchanan. Although various plausible reasons for the discharge of these employees were offered by Judge Buchanan, the Commission finds that these employees were terminated, in part, in retaliation for their participation and testimony in these proceedings.

Conclusion: This conduct constituted a violation of the Code of Judicial Conduct, Canons 1 and 2A.

Canon 1.

"An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. . ."

Canon 2 A.

"A Judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

VI

Judge Buchanan displayed anger and temper in the process of performing his administrative duties and in the presence of others:

a) On one occasion, Jeanette Bregar, a clerk employed by Judge Buchanan, was attempting to assist an individual

inquiring as to the status of his traffic ticket. The Judge unjustifiably became loud and abusive towards Mrs. Bregar in the presence of the individual and forcibly pushed a file cabinet drawer closed, nearly striking Mrs. Bregar's hand.

b) On another occasion he shouted at a defendant, who was seeking assistance in the clerk's office, "listen, sonny, if you don't shut your trap and get out of here right now, you're going to jail."

c) On the 29th of July, 1981, while a clerk was discussing a case setting with attorney James Henry at the counter in the clerk's office at Island County District Court, Judge Buchanan inappropriately interjected himself into the conversation by slamming his fist on the counter and addressing the attorney in a loud and injudicious manner. During this conversation, Mr. Henry's client, Leonard Beckman, entered the clerk's office from the courtroom and advised attorney Henry their case had been called for hearing. The attorney and his client proceeded to the counsel table. Then Judge Buchanan abruptly entered the courtroom where a judge pro tem was presiding and in a disruptive manner ordered the sitting judge not to hear the case. While leaving the courtroom, Judge Buchanan again displayed anger and deliberately pushed Mr. Beckman, forcing him into attorney Henry. These acts were deliberate and unjustified.

d) On several other occasions, Judge Buchanan displayed inappropriate outbursts of temper and anger.

Conclusion: This conduct constituted a violation of the Code of Judicial Conduct, Canons 1, 2A and 3A(3).

Canon 1.

"An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. . ."

Canon 2 A.

"A Judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 3 A.(3).

"A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control."

VII

Judge Buchanan used vulgar, off-color, and sexist remarks, suggestions and acts while in the performance of his administrative judicial duties. Specific examples are as follows:

a) During employment interviews Judge Buchanan asked personal and irrelevant questions such as whether an applicant's husband was the "jealous type" and whether they would go flying with him in his personal airplane or boating on his personal boat.

b) He asked a clerk to wear a certain pair of white pants as "they looked sexy on her".

c) He suggested to the clerks that they attend his service club luncheon and requested them to wear "something sexy". He was to present a part of the program and intended this to be humorous, including his asking the question, "now you have never been sexually harassed by me have you?" And their response was to be in unison, "yes, we have."

d) He commented to a clerk about her "womanly odor".

e) He made statements about the breast sizes and other physical characteristics of the clerks and about the type of "bras" that they wore.

f) He critiqued the clerks sexual attractiveness and referred to one clerk as "young, tender flesh".

g) He inappropriately hugged and kissed one clerk and on another occasion hugged another clerk. This conduct was offensive to the clerks and they found it embarrassing.

Judge Buchanan denies that some of the remarks were made and believes that others were taken out of context by the staff or were voluntarily participated in by some of the staff and were not considered offensive at the time. The Commission finds by a clear and convincing standard that such remarks and conduct did occur and that they were inappropriate in a judicial employer/employee context. The Commission further finds that the toleration of this conduct by some of the clerks was based upon their

apparent fear of incurring the judge's displeasure.

Conclusion: This conduct constituted a violation of the Code of Judicial Conduct, Canons, 1, 2A, and 3B(1).

Canon 1.

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Canon 2 A.

"A Judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 3 B.(1).

"A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials."

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions, the Judicial Qualifications Commission recommends to the Supreme Court that the Honorable Marvin C. Buchanan be censured.

DATED this 27th day of October, 1992.

F. Lee Campbell
F. Lee Campbell

William W. Baker
William W. Baker

Ann Sandstrom
Ann Sandstrom

Ray E. Munson
Honorable Ray E. Munson

Robert J. Bryan
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W. Laurence Wilson
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