

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
OF THE STATE OF WASHINGTON

FILED

AUG 23 1984

JUDICIAL QUALIFICATIONS
COMMISSION

In Re the Matter of:)
HONORABLE JOHN T. DAY, Judge) NO. 83-259-F-6
Skamania County District Court) FORMAL COMPLAINT
Stevenson, Washington 98648)
_____)

Pursuant to authority granted in Revised Code of Washington, Chapter 2.64 (Judicial Qualifications Commission) and the Judicial Qualifications Commission Rules (JQCR), adopted October 14, 1981, and at the order of the Judicial Qualifications Commission, this Formal Complaint alleging the violations by Honorable John T. Day of rules of judicial conduct is filed. The background and facts of the Complaint are set forth in the following paragraphs.

Background

1. Honorable John T. Day (respondent herein) is now and at the time of the acts hereinafter mentioned, was a judge of Skamania County District Court, Stevenson, Washington.

2. On February 16, 1984, respondent was sent a letter from the Judicial Qualifications Commission informing him a Verified Statement was filed in accordance with JQCR 5(d) and the Commission was proceeding with a preliminary investigation.

3. Enclosed with the above-referenced communication was a Statement of Allegations and a copy of JQCR 6.

Facts Supporting Complaint

1. On November 16, 1984, in State v. Rigutto, a matter to be heard before respondent, an affidavit of prejudice was filed asking respondent to remove himself from the case. Respondent denied knowing Mr. Rigutto and refused to remove himself from the case. In fact, respondent knew Mr. Rigutto from his association in the Eagles Lodge and specifically knew of Mr. Rigutto's prior DWI history before the hearing.

2. During a trial before respondent on February 23, 1983, respondent appeared in open court, conducting judicial duties while under the influence of alcohol.

3. On September 23, 1983, respondent repeatedly called Skamania County Sheriff's office, identifying himself as a judge, and attempting to secure the release of a woman held pending arraignment in Stevenson Municipal Court, over which respondent had no judicial jurisdiction.

4. On or about January 5, 1984, respondent brought pressure to bear on the Skamania County Sheriff's department in an attempt to release Michael Brislawn, who was then charged with two counts in Stevenson Municipal Court, over which respondent had no judicial jurisdiction. By his own statement, respondent was

yielding to public pressure in violation of Canon 3A(1) in attempting to secure the release.

5. Respondent has within and without his judicial office, misused the legal system for purposes of inductive harassment, in disregard for judicial decorum and in violation of Canons 2A, 3A(1) and 3A(2). Instances include: (a) maliciously bringing a frivolous suit against ex-clients which resulted in a judgment against respondent, which judgment he then refused to pay, resulting in garnishment of his wages; (b) on his own initiative setting a hearing to determine the general fitness as a juror of a citizen who publicly criticized respondent's failure to prosecute certain actions; and (c) attempting to prevent Jan Kielpinski, an attorney with whom he has a publicly known running feud from collecting statutory attorney's fees on a garnishment action in respondent's court, which attempt was found wrongful and unlawful by the Skamania County Superior Court.

6. Respondent held a substantial pretrial discussion on or before July 20, 1983, with one or more nonparties about the arrest of Robert Blair on a driving offense. Subsequently, respondent dismissed the case because the deputy prosecuting attorney was unprepared to answer claims made by these unnamed nonparties and the defendant that there was misconduct on the part of a tangentially involved police officer.

7. On November 30, 1983, respondent heard a case brought against a long time acquaintance, Bruce Klinger, who had consulted with respondent ex parte, before the trial. Mr. Klinger's wife, who respondent acknowledges as "very close to our family" has worked as a secretary to respondent. The sentence Mr. Klinger received was lower than the normal sentence.

8. On August 3, 1983, respondent heard a small claims case brought by his clients and friends, George and Gloria DeGroote, finding in their favor.

9. Respondent heard an action brought by his client, Darrell Peterson. The defendant Margaret Henderson proffered an affidavit of prejudice which respondent rejected denying outright that he had represented Mr. Peterson.

10. Respondent heard a DWI case brought against a long-time acquaintance and sometimes client, William Truitt, approving on March 23, 1983 Mr. Truitt's application for deferred prosecution, which application was prepared in respondent's office.

11. On November 9, 1983, respondent came to the court office smelling strongly of alcohol and cancelled the docket, stating that he would not hold court again until he had a proper courtroom. The courtroom was the same one normally used when Superior Court was also in session. Respondent then spent the morning with a private client, with whom he had a trial that afternoon.

12. Respondent has consistently written checks on his bank accounts without having sufficient funds in his account to cover said checks, which fact has become common knowledge in Skamania County.

Basis for Commission Action

The Commission has determined that probable cause exists for believing that respondent has violated Canons 1, 2, 3A(1), 3A(2), 3A(3), 3A(4), 3A(5), 3C(1)(a), 3C(1)(b), 5C(1) of the Code of Judicial Conduct (CJC) which state as follows:

CANON 1. A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

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. The provisions of this Code should be construed and applied to further that objective.

CANON 2. A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES

- 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.
- B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

CANON 3. A JUDGE SHOULD PERFORM THE DUTIES OF
HIS OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

- (1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.
- (2) A judge should maintain order and decorum in proceedings before him.
- (3) A judge should be patient, dignified, and courteous to litigant, 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.
- (4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him, by amicus curiae only, if he affords the parties reasonable opportunity to respond.
- (5) A judge should dispose promptly of the business of the court.

C. Disqualification.

- (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:
 - (a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
- ...

5.C. Financial Activities.

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

Notification of Right to File Written Answer

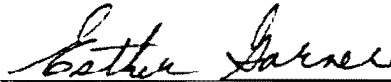
In accordance with JQCR 7, the respondent is herewith informed that he may file with the Commission a written answer to the charges contained in the complaint within fourteen (14) days after the date of service. If respondent does not file a written Answer,

a general denial will be entered on behalf of respondent. The Complaint and Answer shall be the only pleadings required.

DATED this 23rd day of August, 1984.

JUDICIAL QUALIFICATIONS COMMISSION OF
THE STATE OF WASHINGTON

By



ESTHER GARNER
Executive Director
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