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JUDICIAL QUALIFICATIONS
COMMISSION

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
OF THE STATE OF WASHINGTON

In re the Matter of:)
)
Honorable Mark S. Deming, Judge,) NO. 85-386-F-8
Pierce County District Court) DECISION
No. 1, Tacoma, Washington 98401,)
)
Respondent.)
_____)

A fact-finding hearing was held pursuant to Judicial Qualifications Commissions Rules (JQCR) on December 12, 13, 16, 17 and 18, 1985.

BACKGROUND

Honorable Mark S. Deming ("respondent" herein) is now and, at the time of the acts hereinafter mentioned, was a judge of Pierce County District Court, Tacoma, Washington. On July 3, 1985, respondent was sent a letter from the Judicial Qualifications Commission informing him a verified statement has been filed in accordance with JQCR 5(d) and the Commission was proceeding with a preliminary investigation. Enclosed with the above-referenced communication was a statement of allegations. On October 21, 1985, the Commission filed a formal complaint against respondent, which was served on respondent on October 21, 1985, together with a Notice of Fact-Finding Hearing.

The Commission, having heard and considered the testimony of the witnesses called and having reviewed the records and files herein, finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT AND CONCLUSIONS

1. For a period of time, while still married, respondent conducted a romantic relationship with Brenda Poole, while she was employed as a probation officer with the Pierce County Probation Department. The relationship was well known throughout the Probation Department and the courthouse. In spite of the relationship, respondent retained his position as "probation liaison judge" and he continued to allow Brenda Poole to appear in his court and make probation recommendations.

2. The open relationship between respondent and Brenda Poole adversely impacted the administration of the Pierce County District Court No. 1 by exacerbating personnel problems within the Department of Probation. It further contributed to administrative problems among the judges of that court. In a May 30, 1985 letter to Judges Knodel and Tollefson of Pierce County District Court No. 1 "Re: Elaine McNally's Letter of Termination to Ms. Poole Dated 5/22/85," respondent misrepresented to the other judges of the court the facts of such relationship. (Exhibit 5 to Exhibit 53.)

3. Respondent contacted Elaine McNally, the director of the Probation Department, in an attempt to obtain a promotion for Brenda Poole. In doing so, respondent improperly used the prestige of his office to advance the private interests of another person.

4. On June 20, 1985, respondent signed an "EMPLOYER'S STATEMENT OF CLAIMANT'S SEPARATION" (Exhibit 17(d)) concerning Brenda Poole, in which he stated in part that "Ms. Poole was terminated from her employment by the director of the probation department after Ms. Poole and three other probation officers brought to the attention of the judges the lack of policy and procedure guidelines in the Probation Department. . . ." This was an intentionally deceptive and incomplete statement of the basis for the termination of Brenda Poole, in that the statement implied that the termination was solely in retaliation for raising questions about Probation Department policy and procedures.

5. Respondent frequently engaged in inappropriate and injudicious commentary from the bench while sentencing defendants. These comments were made in open court while counsel, parties and others were present. Specific examples of such conduct are:

(a) On April 24, 1985, Donald James Sharp, age 16, appeared before respondent on a charge of driving without a valid operator's license. Respondent told the defendant that

he had to get his license within 90 days, or he would go to jail. Respondent told the defendant he would not like being in jail, and told him a story about a young man who went to the King County Jail who now "gets Valentine's cards from boys rather than girls. Do you understand what I'm saying?" Exhibits 30, 36 at p. 5. By his own admission, similar comments about "Valentine's Day cards" were made by respondent in over 50 cases.

(b) Gregory R. Strayer, a large, burly defendant, appeared before respondent immediately after Donald Sharp. He was also charged with driving without a valid operator's license. Respondent told him to get his license within 90 days, and then said, "Now Greg, if you don't have any intentions of getting your license and you're only pulling my chain in here today, you're going to jail. I want you to do me a favor while you're in jail. Since that last young man was—he's going, too, if he doesn't get a license, you'll be going together, so you take care of him. Okay?" Exhibits 27, 38 at p. 3. (Exhibit 38, which is a transcript of the tape recording of this incident (Exhibit 27), erroneously substitutes "it" for "him.")

(c) On July 17, 1985, Steven Stouffer appeared before respondent on a charge of driving while his license was suspended. The defendant asked that he be released in order

to obtain medical treatment for a broken leg. Respondent agreed to release the defendant if he posted \$200 bail. The following dialogue then took place:

THE COURT: Okay. Mr. Stouffer, your name's in the computer. If you don't show up, I'll issue a warrant. If I issue a warrant, this court has two warrant officers, Mr. Gonzalez and Mr. Betts. Will you look at the two of them. Now, they heard you got a bad leg. You can bet they're going to do something with you, and then something's going to happen to your leg, you're going to come back down here, they're going to have to wheel you from there to here, I'm going to impose a real high bail, you're going to sit in the bucket, I'll be in no hurry to set your trial date, and after your trial--and it will be a fair trial and all that stuff--you'll be guilty, and I'm going to sentence you to the maximum sentence. Why go through the drill. But that's what's in store for you. That is called the script. Okay?

MR. STOUFFER: Yes, sir.

THE COURT: Show up, because you're going to make a chump out of me if you don't show up and I set the bail only at \$200.

MR. STOUFFER: I pushed my luck as far as I could.

DAC COUNSEL: August 16 at 9 you're signing you promise to appear (inaudible). This is the date you have to appear, you have to sign that you will appear.

THE COURT: Mr. Betts, Mr. Gonzalez, Steven Stouffer.

A VOICE: Yes, Your Honor.

THE COURT: Which leg is it?

MR. STOUFFER: My right leg.

THE COURT: Right leg.

Exhibits 23, 39, at pp. 7-8.

(d) On July 17, 1985, Kevin S. McDonald appeared before respondent on a charge of driving while his license was suspended. Respondent told the defendant's parents that he could release the defendant into their custody. The following dialogue then took place:

THE COURT: If he doesn't show up, then I hold you in contempt of court. If I hold you in contempt of court for his failure to appear the next scheduled court date, then that means you sit in the Pierce County Jail until he surrenders himself to custody. Now, if you would have been a surety appointed back on March 7, 1984, you'd still be sitting there until this matter was--until he was apprehended this last time because he didn't follow through. That's the truth of the matter. You're making a

guarantee and a representation to the court that you know him well enough to have enough control over him to assure that he will keep his appointments with the court. If he doesn't--and I hate to do this--in fact, there's a fellow down in jail now, Joe--well, they know him well enough down at the jail they call him Old Joe because he's been waiting for his son to show up now for three years, and they keep getting cards from the kid. I think he's over in Hawaii on the beach while the dad's sitting down here. If you want to run the risk, go ahead. Do you want me to release him to your custody? Because I kid you not. You heard me talking to these gentlemen. You know my reputation. You're not going to screw this court around. I'm not going to waste the taxpayers' money, and if he doesn't show, you're gone. You want to do it?

FATHER: He has to have an attorney, you say, or make sure he has one?

THE COURT: Department of Assigned Counsel will sign in for it, and if you want to get private counsel, fine and dandy, but let's go to the real issue here so that I'll get more acquainted with you. You're talking about putting yourself on the line for your son.

FATHER: (Inaudible.)

THE COURT: You know you're gone if he screws up. But you know, in all likelihood, if you stop to think about it--

MR. McDONALD: I'm not going to screw up.

THE COURT: You cause your old man to go into the bucket, I know that my dad would have taken care of that in ways worse than any judge could come up with unless that judge has a death penalty behind him.

MR. McDONALD: I'm sure I have a father just like yours then.

THE COURT: Now, he's in your custody. I'll put him back on the street and we'll set a pretrial conference date on all these matters. Might as well set them all at the same time (inaudible).

DAC COUNSEL: Yes, Your Honor.

THE COURT: Okay. You show up for a pretrial conference date. That's what you're signing for. I also want his father to sign the pretrial conference order. You have to come back up here and get his name and business address.

Exhibits 22, 40 at pp. 12-14.

(e) On February 21, 1985, Robert M. Herbert appeared before respondent, charged with shoplifting. The defendant stipulated to facts sufficient to convict. Respondent agreed to dismiss the charges against the defendant on the conditions of one year of law-abiding behavior and his completion of

consumer awareness school. He then placed the defendant under oath, had him promise to "stay out of trouble," and told him: "Now you know what's going to happen if you get in trouble? I'll give you a year on this and I'll get you for perjury because I put you under oath and I'll charge you with a class B felony for lying to me, and then that carries ten years and I won't have to worry about you any more. You stay out of trouble." Exhibits 25, 41 at pp. 4, 9.

(f) On April 24, 1985, Richard Revis appeared before respondent on a charge of driving without a valid operator's license. The defendant stated that he had taken his driving test and failed it. Respondent placed the defendant under oath, and asked him if he had taken the Washington State driver's license examination. The defendant stated that he had. Respondent stated that if the defendant had not taken the examination, he was subject to a ten-year jail sentence for perjury. Respondent stated that if he found out the defendant had not taken the examination, he would order the King County Prosecutor to file perjury charges against the defendant. Exhibits 28, 45, at pp. 3-5.

(g) On June 18, 1985, Darrell W. Davids appeared before respondent on a charge of driving without a valid operator's license. Respondent ordered the defendant to get

his license and to stay out of trouble for four months, or he would send him to jail. The following dialogue then took place:

THE COURT: And also, what else I'm going to do--based on your representation to me that you don't remember these other tickets or anything else, I don't ever want you saying you didn't remember your day in court with me--I'm going to be concerned about your mental abilities and capacities. So, I'm going to send you out to Western State Hospital for an evaluation. You'll love it out there after you do two weeks out there with people that are bouncing off the walls in the wards out there. You'll do two weeks out at Western State Hospital and then you'll come to jail. That's going to be my punishment to you because you're going to remember from now on, when you have a responsibility to the court, you'll keep that responsibility. Have you ever heard about what goes on in the mental institutions?

A: Just a little bit from my friends--

Q: Maybe sometime in the next four months, go see the movie, "One Flew Over the Cuckoo's Nest," or read the book--

A: _____

Q: Yeah. What's-his-name went out to--Jack Nicholson went out to one of those places 'cause he thought he was going to be doing hard time, and it ended up screwing the rest of his life. Okay--I don't care--they can medicate you, they can do whatever they want

Exhibits 29, 34 at p. 7.

(h) On April 24, 1985, Michael A. Holland appeared before respondent on a charge of negligent driving. Respondent ordered the defendant to attend and complete defensive driving school, and after informing defendant that a negligent driving charge "doesn't carry a whip of any jail time" stated, "If you don't go to Defensive Driving School, then I'm going to hold you in contempt of court. That puts you in jail. How long do you have to stay in jail? Till you finish Defensive Driving School. Now, if you have Defensive Driving School in jail, you sit there as long as I want you to, so you go to Defensive Driving School, got it?" Exhibits 28, 47 at pp. 5-6.

Respondent's courtroom behavior has impugned the integrity and prestige of his office. His actions demonstrate an abuse of power and a lack of concern for the public's perception of the judicial process.

6. The following conduct occurred:

(a) In Court:

(i) In early 1984, respondent stated to Kitty-Ann van Doornink, a deputy prosecutor with the Pierce County Prosecutor's office, "Kitty-Ann, I'd really like to jump your bones." Respondent made this statement in his courtroom at the conclusion of the docket.

(ii) On April 2, 1984, Cathryn Ruckle, a legal intern with the Department of Assigned Counsel, was in respondent's courtroom on a matter. The prosecutor informed respondent that Ms. Ruckle was there on a matter that could be handled quickly, and respondent stated, "Ms. Ruckle's here for a quickie?" See Exhibit 54.

(iii) In late summer 1983, respondent blew kisses at Joan Wilkerson, a legal intern with the Department of Assigned Counsel, as she stood in respondent's courtroom with her clients.

(iv) While walking through the courtroom of Judge Filis Otto, respondent stated to Carolyn Lee, a legal intern with the Department of Assigned Counsel, "I love you, and I can't live without you."

(b) Elsewhere in the Courthouse:

(i) In his antechambers, following the arraignment of one Robert Mummulo, respondent stated to

Carolyn Lee, "Come into my chambers, counsel, and take your clothes off."

(ii) During the summer of 1983, in his antechambers, respondent hugged Debbie D'Alessio, his docket clerk, and undid her bra strap, stating words to the effect of "I guess I haven't lost my touch."

(iii) In his chambers, respondent commenting to Margaret Ross, a deputy prosecutor with the Pierce County Prosecutor's office, on a pin fastening her blouse in a space between two buttons, asked if she needed the pin because "you're so big."

(iv) In the spring of 1984, respondent stated to Margaret Ross, "You were great last night." This occurred while Ms. Ross was standing at the copy machine directly outside respondent's antechambers, in the presence of a new deputy prosecutor she was training.

(v) On or about March 19, 1984, Margaret Ross testified in a case before respondent. A short while later, respondent called Ms. Ross on the telephone and stated that he had reached "a heightened level of excitement" seeing her on the witness stand.

(vi) In the fall of 1983, following a dinner honoring Justice Rosellini, which they both attended, respondent stated to Chris Quinn-Brintnall, then chief

criminal deputy with the Pierce County Prosecutor's office, that he had been madly in love with her "ever since we had dinner together the other night." This took place in an elevator in the courthouse, in the presence of a number of other people.

(vii) Respondent asked Janet Jarmon, supervisor of the Criminal Department at Pierce County District Court, to go out with him, telling her that her husband did not have to know. Respondent also commented repeatedly on Ms. Jarmon's body, and told her he lay in bed at night thinking about her.

(viii) Respondent regularly asked Kitty-Ann van Doornink when she would leave her husband, when she would go out with him, and regularly directed sexual innuendos to her.

(ix) Respondent frequently directed sexual innuendos to Joan Wilkerson by making comments such as "thank you for last night," and touching her inappropriately numerous times.

(x) In his chambers, respondent, wearing his judicial robes, got down on his knees in front of Cathryn Ruckle, and told her he had not been able to stop thinking about her since seeing her braless at an out-of-court workshop several days before. This occurred about March 1983.

(xi) On one occasion, in respondent's antechambers, he agreed to issue an order releasing Cathryn

Ruckle's client, hugged her, and made a patronizing remark about granting "whatever Cathy wants," in the presence of another person.

(xii) In an elevator in the courthouse, when Pam Studeman, a legal intern with the Department of Assigned Counsel, greeted respondent, he stated, "Isn't it funny how at lunch I was sweetheart and darling and now I'm Judge Deming." Respondent made this statement in front of a number of other people.

(xiii) On one occasion when Pam Studeman was in respondent's chambers with a male attorney, respondent suggested that she and the attorney were seeing each other and asked, "How good is she, what's she like?"

Each of these incidents involved women who had to appear in respondent's courtroom or were under respondent's supervision and control. The actions were undignified, unprofessional, demeaning, and were embarrassing to the involuntary participants.

7. In his testimony, respondent was evasive and made repeated personal attacks on other witnesses, which were unnecessary and unresponsive, and was not credible.

8. The Commission further finds that respondent often provided assistance to legal interns in his courtroom by critiquing their performance and educating them about court procedures.

9. Respondent cooperated with the Commission in its investigation.

CONCLUSIONS

1. The conduct described in Finding No. 1 constituted violations of Canon 2.A of the Code of Judicial Conduct (CJC).

2. The conduct described in Finding No. 2 constituted violations of Canons 1 and 2 of the CJC.

3. The conduct described in Finding No. 3 constituted a violation of Canon 2.B of the CJC.

4. The conduct described in Finding No. 4 constituted a violation of Canons 2.A and 2.B of the CJC.

5. The conduct described in Finding No. 5 constituted violations of Canons 2.A and 3.A(3) of the CJC.

6. The conduct described in Finding No. 6 constituted violations of Canons 1, 2, and 3.A(3) of the CJC.

7. The conduct described in Finding No. 7 constituted a violation of Canons 1 and 2.A.

RECOMMENDATION

The Commission has considered the following criteria in making its recommendation:

(a) Whether the misconduct is an isolated instance or evidences a pattern of conduct;

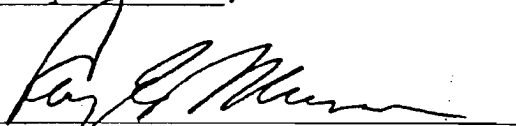
(b) The nature, extent, and frequency of occurrence of the acts of misconduct;

- (c) Whether the misconduct occurred in or out of the courtroom;
- (d) Whether the misconduct occurred in the judge's official capacity or in his private life;
- (e) Whether the judge has acknowledged or recognized that the acts occurred;
- (f) Whether the judge has evidenced an effort to change or modify his conduct;
- (g) The length of service on the bench;
- (h) Whether there have been prior complaints about this judge;
- (i) The effect the misconduct has upon the integrity of and respect for the judiciary.

Utilizing the above criteria, findings of fact and conclusions, it is the opinion of the Judicial Qualifications Commission that respondent has demonstrated a lack of those personal and professional qualities which are minimally necessary to qualify one to hold judicial office in the State of Washington. Therefore, the Commission recommends to the Supreme Court that the Honorable Mark S. Deming be removed from office.

DATED this 10th day of January, 1986.


William W. Baker


Honorable Ray E. Munson

Thomas D. Loftus
Thomas D. Loftus

Frank D. Howard
Honorable Frank D. Howard

Brenda Teals
Brenda Teals

Thomas E. Kelly
Honorable Thomas E. Kelly

Ann Sandstrom
Ann Sandstrom

Judge Frank D. Howard concurs with the result and all findings except the last sentence in Finding No. 4.

The Director of Probation Services purported to terminate the employment of Brenda Poole as a probation officer. The director does not have this authority, only the judges can terminate the employment of a probation officer. Three of the four judges agreed that the termination was without cause. The finding is not supported by the record.

Frank D. Howard