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JUDICIAL QUALIFICATIONS
COMMISSION

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
OF THE STATE OF WASHINGTON

IN RE THE MATTER OF:)
) NO. 85-386-F-8
Honorable Mark S. Deming, Judge,)
Pierce County District Court #1,) FORMAL COMPLAINT
Tacoma, Washington 98401,)
)
Respondent.)
_____)

Pursuant to authority granted in Revised Code of Washington, Chapter 2.64 (Judicial Qualifications Commission) and the Judicial Qualifications Commission Rules (JQCR) adopted September 1, 1984, and at the order of the Judicial Qualifications Commission, this formal complaint alleging violations by Honorable Mark S. Deming of Rules of Judicial Conduct is filed. The background and facts of the complaint are set forth in the following paragraphs.

Background

1. 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.

2. On July 3, 1985, 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.

Facts Supporting Complaint

1. For a period of time, since election to his position, respondent has engaged in repeated sexual harassment of female employees in the Pierce County Probation Department, female interns with the Office of Department of Assigned Counsel and female attorneys with the office of the Pierce County Prosecuting Attorney, which harassment included a stream of sexual innuendo, uninvited touching, attempting to date and intimidate said females, said actions taking place in respondent's courtroom, his chambers, at lunch, at social occasions and in other places. Some of the incidents of sexual harassment and some of the parties involved are as follows:

(a) Carolyn Lee was a legal intern with the Office of Department of Assigned Counsel from September of 1983 through May of 1984. During that period of time respondent made a statement in court about defense counsel giving her phone number to him. In chambers before two other persons respondent stated to Ms. Lee

"would you come into my chambers counsel and take your clothes off and bend over". Respondent also accosted Ms. Lee in the hallway stating, "I can't live without you";

(b) Ann Ryan was a legal intern with the Office of Department of Assigned Counsel in December of 1983 and is currently an attorney in that office. Shortly after coming to work as a legal intern, respondent asked her to lunch and during the luncheon stated, "our professional relationship would be a lot better if you didn't treat me as a sex object." In court, respondent continually addressed sexual innuendos to Ms. Ryan and at a law school class party at which respondent was invited by reason of his capacity as a judge, made obvious attempts to proposition Ms. Ryan and a fellow classmate to the extent that it caused considerable conversation around the law school;

(c) Cathy Ruckle was a Rule 9 intern for the Office of Department of Assigned Counsel from May 10, 1982 until September 1984. After becoming a judge, respondent repeatedly called Ms. Ruckle into his chambers, closed the door and suggested "we should get together." Respondent called Ms. Ruckle at home one Saturday morning and left a message. The call was an uninvited attempt by respondent to pursue a personal relationship with Ms. Ruckle. After attending an informal seminar on DWI cases held on a Saturday, at which Ms. Ruckle was wearing a blousy shirt and jeans,

respondent commented the next day, "I haven't been able to get you off my mind since I saw you without a bra." On one occasion, respondent called Ms. Ruckle into his chambers, got down on his knee and stated "I really want you, why don't we go to Seattle tonight." On another occasion he called Ms. Ruckle at home and suggested they go to the beach together. On April 2, 1984 in the matter of State v. Fitzsimmons, heard before respondent, the prosecuting attorney requested permission for Ms. Ruckle to step in for a quick matter. Respondent responded, "Ms. Ruckle's here for a quickie?" On several occasions while speaking with respondent about a case he has responded to her concern by putting his arms around her. On one occasion Ms. Ruckle requested reconsideration of a bail matter. After hearing her explanation, respondent hugged Ms. Ruckle and requested his assistant to type up a new order reflecting Ms. Ruckle's request. The implication was that the order was granted because the respondent was patronizing her.

(d) Margaret Ross is a deputy Pierce County prosecutor. At one point respondent took Ms. Ross to lunch and during the lunch stated "what would you do if I left my wife, could we run off together?" Later, when she encountered respondent, he stated "I'm thinking about you, let's run off together." The latter comment was made with other people in the vicinity. On one occasion when Ms. Ross was in charge of the district court filings for the

prosecutor's office, there was some confusion over a trial setting which required Ms. Ross presence in respondent's court. He later called her and stated to her that he had reached a "heightened state of excitement seeing her on the witness stand." In the presence of other people, respondent put his arm around Ms. Ross and stated, "you were great last night";

(e) Pam Studeman is a Rule 9 intern with the Office of Department of Assigned Counsel. On one occasion respondent put his arm around Ms. Studeman and said "oh, Pam, what your body does to me." At another time when she was in chambers with a male attorney, respondent indicated he thought the two of them were seeing each other and asked "how good is she? what's she like?" At another time, when presenting an order for reconsideration in chambers, respondent stated "how can I turn you down, look at your big blue eyes", and in a crowd with a group of other people in the courthouse stated, "isn't it funny how at lunch I was sweetheart and darling and now I'm Judge Deming";

(f) Joan Wilkerson is presently a practicing attorney in Tacoma and was a Rule 9 intern at the Office of Department of Assigned Counsel from June through December of 1983. At one point while she was in open court with her client and there was a break in the proceedings, respondent leaned over the bench and blew kisses in her direction. This was observed by her client and

others in the courtroom. Frequently attorneys and state patrol officers would congregate in the anteroom outside the judge's chambers. Respondent would frequently come into that group, grab Ms. Wilkerson by the waist or put his arm around her shoulder and make sexual innuendos;

(g) Debbie Deliso was docket clerk since June of 1983 and had worked for Judge Boyce prior to respondent's election. While working in respondent's court, respondent constantly made statements containing sexual innuendos to Ms. Deliso including asking her to go into his chambers and close the door implying something other than business was to be discussed. On one occasion respondent fiddled with Ms. Deliso's brassiere strap until she demanded he stop;

(h) Pam Tourtlotte is a probation officer in the Pierce County Probation Department. Three times, in open court, respondent asked Ms. Tourtlotte to approach the bench and stated "I just wanted to touch you." On one occasion respondent chased Ms. Tourtlotte around his clerk's desk stating he wanted to touch her;

(i) Susan Hoppenrath is a former probation officer in the Pierce County Probation Department. One week after Ms. Hoppenrath reported to work she received a call from respondent during which he stated "do you know who this is? I think you're absolutely beautiful, are you single?" In August of 1983, respondent called

her on the phone and stated "I'm thinking of leaving my wife and if I do will you go out with me." He then said, "I was just kidding but will you go out to lunch with me." At another time, respondent showed Ms. Hoppenrath a picture of her that he had in a drawer in his chambers and stated that he would return it to her if she would give him another one to replace it;

(j) Chris Quinn-Brintnall is the chief criminal deputy of the Pierce County Prosecuting Attorney's office. Ms. Quinn-Britnall relates that after seeing respondent at a retirement dinner for Justice Rosselini, he stated, "when are we going to have lunch, I've been madly in love with you since the other night." She later went to lunch with him and stated that during lunch he made overtures and comments insinuating an affair between the two of them. After she stated that she didn't date cops, lawyers or married men, he responded, "I will have to do two things then." At one time respondent intimated that he could make her a pro tem judge.

All of the above incidents involve women, who by the nature of their occupations, had to appear in respondent's courtroom or were under respondent's supervision and control. The Pierce County probation office is under the control and administration of the Pierce County District Court and respondent was the probation "liaison" judge. The women named above and others were

intimidated, patronized and harassed by respondent, to the extent that, respondent's persistent conduct impeded their ability to perform their jobs, significantly affected their professional credibility and undermined their authority in their respective positions. Because of respondent's position as a judge, these women felt they could not deflect respondent's aggressive behavior and sexually suggestive comments without jeopardizing their ability to perform their jobs. Respondent's advances were unwarranted, unsolicited and inappropriate. Several resigned their positions because of respondent's actions.

2. 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" which required him to administer over the Probation Department and he continued to allow Brenda Poole to appear in his court and make probation recommendations.

3. On May 22, 1985, Brenda Poole was terminated from the Pierce County Probation Department for the following reasons: (a) her relationship with respondent and its effect on the integrity of the department; (b) her work behavior; (c) insubordination; (d)

abuse of her relationship with respondent; and (e) dereliction of duty. Respondent was aware of the termination and of the reasons set forth above. In June of 1985, respondent, while sitting as acting chief judge, signed a statement to the Employment Security Department, under penalty of perjury, that Brenda Poole was discharged "due to [her] involvement in bringing problems within [her] department to the attention of the judges." Based on respondent's statement, the Employment Security Department allowed Ms. Poole to receive unemployment benefits because "such actions do not constitute a deliberate disregard of the employer's best interests and are not held to be misconduct, as defined by law."

4. Respondent has continuously conducted himself in court in an aberrational and unstable manner including, but not limited to, the following events which are only illustrative of a constant course of conduct:

(a) While sitting for Judge Utigard in Airport District Justice Court on February 4 and April 24, 1985, did the following in open court:

(i) Respondent dismissed a case against a defendant for lack of probable cause and, after dismissing it, called the defendant a "slimy worm" who did not deserve this system of law to protect him;

(ii) A 16-year-old was charged with driving without a valid operator's license. He had not passed the operator's license

test. Respondent put him under oath and asked if he was going to get a license in thirty days. The defendant stated he would and respondent told him "now, if you don't, you'll be charged with perjury" and informed him of the possible jail sentence for conviction of perjury. Respondent then asked if the defendant had ever been in prison or wanted to go to prison. The defendant answered in the negative, and in a crowded courtroom, respondent told a story about a fellow in prison, "who now gets valentine cards from guys, you know what I mean." After the 16-year-old, the next case involved a 250-pound burly black defendant. After putting the defendant under oath respondent stated that if he did not tell the truth he would charge him with perjury and he would go to prison. Respondent then stated, "promise me you'll take care of that other kid (the 16-year-old) if you go to prison";

(iii) In a negligent driving case, the state put on its case through the testimony of an officer. At the close of the officer's testimony, respondent pounded his gavel on the bench and said "guilty." The defendant was pro se and asked if he did not get to say anything. The judge asked if he was going to contradict the officer. The defendant said "no" and the judge said "you're guilty;"

(iv) A man in his 50s with an English accent and wearing a three-piece suit was charged with driving without a license. The defendant stated he was on his way to get a license when he

received the ticket. Respondent simply took the defendant at his word and commented that he came to court dressed appropriately, indicating that how one appeared in court affected the sentence one might get;

(b) In a matter in Pierce County District Court regarding a defendant driving without a license, respondent threatened to send the defendant to Western State Mental Hospital if he did not get his license in four months;

(c) In Pierce County District Court Cause No. 85-648963-7, Robert Herbert, the defendant, was charged with shoplifting. After stipulating to facts sufficient to convict, respondent asked if the defendant wished to make any statements. The defendant, obviously mentally disturbed began to ramble on about being persecuted by people. Respondent stopped the defendant, stood up, went into his chambers, and returned with a gavel which was about three feet long. He then stood up and said "I keep this gavel around for guys like you Robert, I hope I'm not going to have to use it on you";

(c) In another incident in Pierce County District Court on a first-offense DWI charge, respondent told the defendant "you are going to do one day in jail and if you violate any of these provisions you get valentines from boys, in Pierce County Jail you get a boyfriend."

(d) In State v. Bonnie Brook Davis, No. 85-649976-8, heard August 13, 1985, the defendant was charged with shoplifting.

As the noon hour approached, respondent refused to allow character witnesses for the defendant and stated she was guilty. The attorney for the defendant objected, stating he had not made his closing argument. Respondent stated "I don't need closing argument, I am sure you don't want to waste everyone's time by bringing people back at 1:30 when it won't sway the court," after persistence on behalf of the defense counsel, respondent stated "alright, come back at 1:30, you will have two minutes for closing argument." These statements were made before a packed courtroom.

(e) On July 17, 1985, in respondent's courtroom, a defendant in custody for a driving offense, with a broken leg asked to be released on his personal recognizance to obtain medical treatment. Respondent, gesturing to two burly warrant officers in the rear of the courtroom, stated "If you don't come back, they will come get you and bring you back on a stretcher. They know which leg it is."

(f) On the same day as the incident described in (e) above, a minor arrested for driving infractions requested release to his parents custody. Respondent stated "Your driving record sucks." Then, directing his comments to the parents, stated "I'll let him out in your custody, but if he doesn't come back, I'm going to come get you and put you in jail, and you're going to stay there until your son comes back." All of these statements made on July 17, 1985 were made before a packed courtroom.

(g) In State v. Demetrios Domingues, No. 85-649571-5, on September 25, 1985, respondent issued a bench warrant against a defendant, because his attorney was delayed, even though the defendant was in respondent's courtroom.

Respondent's courtroom demeanor and behavior has impinged the integrity, decorum and prestige of his office. Many attorneys in Pierce County refuse to practice in his courtroom. His actions demonstrate a cavalier attitude to judicial duties, a lack of concern of public perception of the judicial process and an abuse of power.

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) and 3A(4) 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 duties. 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.

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 2/21 day of October, 1985.

JUDICIAL QUALIFICATIONS COMMISSION OF
THE STATE OF WASHINGTON

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