

FILED
JUN 05 1987

COMMISSION ON
JUDICIAL CONDUCT

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF WASHINGTON

In the Matter of the Complaint)
Against:)
 JAMES C. KAISER, Judge) NO. 86-515-F-10
) REPORT AND
Northeast District Court) RECOMMENDATION
Redmond, Washington)

A fact-finding hearing relating to the above matter was held on May 11, 1987, pursuant to order of the Commission on Judicial Conduct and in accordance with the Commission on Judicial Conduct Rules (CJCR). A copy of the Formal Complaint was personally delivered to the Honorable James C. Kaiser (Respondent) on March 17, 1987. His answer was filed with the Commission on March 30, 1987. Notice of fact-finding hearing was mailed to him on April 7, 1987.

The Commission on Judicial Conduct appointed F. Lee Campbell to serve as Master. Mr. Campbell conducted the fact-finding hearing.

1 regarding certain contentions made by his opponent. He was
2 primarily concerned with allegations to the effect that he was
3 not fair and impartial in his handling of cases involving DWI
4 defendants.

5 IV.

6 An advertisement appeared on October 29, 1986, in the
7 Northshore Citizen, the Sammamish Valley News, and the Kirkland
8 Courier Review stating that respondent was "toughest on drunk
9 driving" and stating further that "Judge Kaiser's opponent, Will
10 Roarty, receives the majority of his financial contributions
11 from drunk driving defense attorneys. These lawyers do not want
12 a tough, no-nonsense judge like Judge Kaiser."

13 V.

14 On November 2, 1986, an advertisement appeared in the
15 Bellevue Journal American stating "Will Roarty is supported by
16 D.W.I. defense attorneys--THERE MUST BE A REASON."

17 VI.

18 On a sample ballot mailed to voters prior to the election,
19 the following was stated: "Judge Kaiser is 'tough' on drunk
20 driving . . ." "Will Roarty, the opponent, receives the majority
21 of his financial support from drunk driving defense attorneys,
22 whose primary interests are getting their clients off."

23 VII.

24 A letter addressed "Dear Voter" was hand delivered to
25 prospective voters by respondent and others working on his behalf

1 while "doorbelling" prior to the election. The letter stated:

2 "My opponent, Will Roarty, has received the
3 majority of his financial contributions from drunk
4 driving defense attorneys. This is the only group
involved with the Northeast District Court not support-
ing my reelection.

5 The point is clear, I am a tough, no-nonsense
6 judge and this group of attorneys wants to prevent
my reelection."

7 VIII

8 Donna Belin and Val Roney, signing as campaign co-chair-
9 persons of the committee to reelect respondent, mailed a letter
10 to Democratic precinct committee persons within the voting area
11 which stated in part as follows:

12 "Bearing in mind the non-partisan position a judge
13 must maintain while on the bench, it may be useful
14 for you to know that Judge Kaiser's family have been
life-long democrats. Indeed, Judge Kaiser has door-
belled for democrats in the past...."

15 IX.

16 During his service as a Judge prior to and during the
17 1987 campaign, respondent was concerned regarding the problem of
18 alcoholism as it affected DWI defendants appearing before him.
19 He was in favor of deferred prosecution in appropriate cases and
20 he often prescribed programs relating to the treatment of alco-
21 holism. In DWI matters not involving alcoholism, however, he
22 was generally regarded as a stern judge in his sentencing. In
23 matters not involving DWI charges, he was generally regarded as
24 fair and impartial.

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X.

In an effort to determine that the majority of his opponent's campaign financial support came from "drunk driving defense attorneys," respondent and one of his campaign co-chairpersons obtained the public disclosure forms filed by the opponent, reviewed them for the names of defense attorneys, listed those known to them as "DWI defense attorneys" and then called the balance of the defense attorneys' offices. These calls were made by the co-chairperson, in the presence of the respondent. She asked the attorney, or his/her secretary if he/she was not available, whether the attorney would represent her if she was charged with DWI. If the response was in the affirmative, she and respondent considered that attorney to be a "DWI attorney." They gave no consideration to how many DWI cases the attorney had handled in the past, or how often he/she did so.

XI.

Prior to the hearing, the Commission on Judicial Conduct requested respondent to identify those attorneys listed on his opponent's public disclosure forms which he considered to be "DWI attorneys." Sixty attorneys were so designated. The Commission obtained affidavits from fourteen of those attorneys, each of whom stated that he or she either did not handle DWI defense cases or had handled very few of such cases in the past. Affidavits were also obtained from twenty-two of the other design-

1 nated defense attorneys, each of whom stated that DWI defense
2 work represented only a minimal portion of his/her practice.
3 All thirty-six affidavits were admitted into evidence by stipula-
4 tion in lieu of live testimony.

5 XII.

6 In determining that the majority of his opponent's
7 campaign financial support came from "drunk driving defense attor-
8 neys", respondent noted that the total of funds contributed to
9 that campaign as of October 17, 1986, was \$13,944, exclusive of
10 "in-kind" contributions. He deducted from that amount the total
11 of his opponent's personal funds, leaving a balance of \$7,944.
12 He then added together all of the contributions from the sixty
13 attorneys whom he considered to be "DWI defense attorneys" and
14 those totalled \$4,001. He then concluded that those attorneys
15 had contributed 50.4 percent of the financial support given to
16 his opponent.

17 XIII.

18 In reviewing the contributions shown on his opponent's
19 public disclosure form, respondent did not consider "in-kind"
20 contributions as "financial contributions". "In-kind" contribu-
21 tions given by both attorneys and non-attorneys totalled \$1,872.54.

22 XIV.

23 The fourteen attorneys referred to in paragraph XI
24 above, from whom affidavits were obtained by the Commission,
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1 made contributions to the opponent's campaign totalling \$700.00.
2 Those attorneys could not have been considered as "DWI attorneys"
3 on the basis of their affidavits. By deducting their contributions
4 from the total of contributions from "DWI attorneys" arrived at
5 by the respondent, as referred to in paragraph XII above, the
6 total would have been \$3,301. Without consideration to the
7 "in-kind" contributions and on the basis of respondent's computa-
8 tions, attorneys other than the fourteen who either did not
9 handle DWI cases or who had handled very few in the past would
10 have contributed 42 percent of the opponent's financial campaign
11 support. Consideration of "in-kind" contributions would have
12 resulted in a reduction to approximately 35 percent -- again, on
13 the basis of respondent's computations.

14 XV.

15 Upon noting an indication in his opponent's campaign
16 literature that the Democratic party had given support to the
17 opponent, respondent and his campaign committee decided that it
18 was important to advise voters that he had worked for the Democratic
19 party in the past and that he came from a Democratic family.
20 That prompted issuance of the letter described in paragraph VIII
21 above. This was reviewed and approved by respondent before it
22 was disseminated. In effect, it identified him as a member of a
23 political party.

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XVI.

On November 4, 1986, the King County Records and Election Division announced the final results of the election, following both an official canvas and a recount. Respondent received 18,431 votes and his opponent received 18,430. Respondent was thereby re-elected.

XVII.

The election campaign involved in this matter was heated and intense, with the campaign staff of each candidate making every possible effort to have its candidate elected. The advertising for which the respondent is criticized was mainly responsive to, and prompted by, the advertising of his opponent.

CONCLUSIONS

I.

Respondent's conduct in authorizing the letter referred to in paragraph XV of the Findings of Fact constituted a violation of the Code of Judicial Conduct, Canons 1, 2(A), 7(A)(2), 7(B)(1)(a) and 7(B)(1)(b) in that he thereby allowed his campaign co-chairpersons to comment upon his past activities in behalf of a political party and the relationship of his family to that party, in that he thereby did not maintain the dignity appropriate to judicial office and did not promote public confidence in the integrity and impartiality of the judiciary and in that he did not thereby observe a high standard of conduct so that the

1 integrity and independence of the judiciary could be preserved.

2 II.

3 Respondent's conduct in authorizing the publication of
4 advertising to the effect that his opponent was supported by
5 "DWI defense attorneys" and that the majority of financial contri-
6 butions received by his opponent were from "drunk driving defense
7 attorneys" constituted a violation of the Code of Judicial Conduct,
8 Canons 1, 2(A), 7(B)(1)(a) and 7(B)(1)(d) in that he did not
9 take proper and sufficient steps to determine the accuracy of
10 that information, causing such advertising to be false, misleading
11 and deceptive, in that such conduct was not consistent with the
12 dignity appropriate to judicial office and did not promote public
13 confidence in the integrity of the judiciary and in that he did
14 not thereby observe a high standard of conduct so that the
15 integrity and independence of the judiciary could be preserved.

16 III.

17 Respondent's conduct in authorizing the publication of
18 advertising to the effect that he was "toughest on drunk driving"
19 and that he was a "tough, no-nonsense judge" constituted a violation
20 of the Code of Judicial Conduct, Canons 1, 2(A), 3(A)(1)(6),
21 7(B)(1)(a) and 7(B)(1)(c) in that such advertising could have
22 given the impression that he was not always impartial in the
23 performance of his duties, particularly in drunk driving cases,
24 in that such advertising was not consistent with the dignity
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1 appropriate to judicial office and did not promote public confidence
2 in the integrity and impartiality of the judiciary and in that
3 respondent did not thereby observe a high standard of conduct so
4 that the integrity and independence of the judiciary could be
5 preserved.

6 APPLICABLE CANONS

7 CANON 1 -- A JUDGE SHOULD UPHOLD THE INTEGRITY AND
8 INDEPENDENCE OF THE JUDICIARY

9 An independent and honorable judiciary is indispensable
10 to justice in our society. A judge should participate
11 in establishing, maintaining, and enforcing, and should
12 himself observe high standards of conduct so that
13 the integrity and independence of the judiciary may
14 be preserved. The provisions of this code should be
15 construed and applied to further that objective.

16 CANON 2 -- A JUDGE SHOULD AVOID IMPROPRIETY AND THE
17 APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES

18 (A) A judge should respect and comply with the law
19 and should conduct himself at all times in a manner
20 that promotes public confidence in the integrity and
21 impartiality of the judiciary.

22 CANON 3 -- A JUDGE SHOULD PERFORM THE DUTIES OF HIS
23 OFFICE IMPARTIALLY AND DILIGENTLY

24 (A) Adjudicative Responsibilities.

25 (1) A judge should be faithful to the law and
26 maintain professional competence in it. He should
be unswayed by partisan interest, public clamor, or
fear of criticism.

* * * * *

(6) A judge should abstain from public comment
about a pending or impending proceeding in any court,
and should require similar abstention on the part of
court personnel subject to his direction and control.
This canon does not prohibit judges from making public

1 statements in the course of their official duties or
2 from explaining for public information the procedures
of the court.

3 CANON 7 -- A JUDGE SHOULD REFRAIN FROM POLITICAL
4 ACTIVITY INAPPROPRIATE TO HIS JUDICIAL OFFICE

5 (A) Political Conduct in General

6 (2) A judge holding an office filled by public
7 election between competing candidates for such office,
8 may attend political gatherings and speak to such
9 gatherings on his own behalf or that of another
judicial candidate. The judge or candidate shall
not identify himself as a member of a political
party, and he shall not contribute to a political
party or organization.

10 (B) Campaign Conduct

11 (1) A candidate, including an incumbent judge,
12 for a judicial office that is filled either by public
13 election between competing candidates or on the basis
of a merit system election:

14 (a) should maintain the dignity appro-
15 priate to judicial office, and should encourage members
of his family to adhere to the same standards of
political conduct that apply to him;

16 (b) should prohibit public officials or
17 employees subject to his direction or control from
doing for him what he is prohibited from doing under
18 this canon; and except to the extent authorized under
19 Canon 7(B)(2) or (B)(3), he should not allow any
other person to do for him what he is prohibited
from doing under this canon;

20 (c) should not make pledges or promises
21 of conduct in office other than the faithful and
impartial performance of the duties of the office;
22 announce his views or disputed legal or political
23 issues; or misrepresent his identity, qualifications,
present position, or other fact;

24 (d) should not permit false, misleading,
25 or deceptive campaign advertising to be published or
26 broadcast in behalf of his candidacy.

1 RECOMMENDATION

2 The conduct of respondent was responsive to the campaign
3 advertising and conduct of his opponent. It was his thought
4 that the advertising for which he is criticized was necessary to
5 present prospective voters with an accurate understanding of his
6 reputation, attitude and ability as a judge. He submits that
7 his conduct should be measured in light of the circumstances
8 which then existed and the timing involved. Even with those
9 considerations in mind, it is clear that his conduct was in
10 violation of portions of the Code of Judicial Conduct and it
11 should not be excused.

12 It is the recommendation of the Master that the Commission
13 on Judicial Conduct recommend to the Supreme Court of the State
14 of Washington that the Honorable James C. Kaiser be censured for
15 his conduct as described in the Findings of Fact set forth
16 above.

17 DATED: This 24th day of June, 1987.

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MASTER