

**FILED**  
*Final*  
FEB 7 1991  
COMMISSION ON  
JUDICIAL CONDUCT

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JAN 4 1991  
COMMISSION ON  
JUDICIAL CONDUCT

BEFORE THE COMMISSION OF JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON

In re the Matter of )  
 ) NO. 90-953-F-20  
HONORABLE JANICE NIEMI, )  
Pro tem Judge of the Superior ) DECISION  
Court of King County. )  
\_\_\_\_\_ )

A Fact Finding Hearing was held pursuant to Commission on Judicial Conduct Rules (CJC) as ordered by the Commission on Judicial Conduct (the "Commission") on November 2, 1990. Members of the Commission present as fact finders were: Steven A. Reisler, Chairperson; Dale Brighton; the Honorable Thomas E. Kelly; Sharon Mast; Wesley A. Nuxoll; Santos U. Ortega; Pamela T. Praeger; Hal V. Reasby; Ruth Coffin Schroeder; and the Honorable Donald H. Thompson.

Respondent was present in person. Also present in an amicus curiae status for respondent was Robert Aronson. The Commission was represented by David D. Hoff. The respondent and counsel for the Commission orally stipulated to the factual allegations in the Statement of Charges and to the truth and accuracy of two exhibits

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from the King County Department of Judicial Administration stating the number of days that respondent had served as judge pro tempore from January 3, 1990 to the date of the hearing.

The Commission, having heard and considered the factual stipulations and having reviewed the records and files herein, and having considered the briefing of counsel, the arguments of counsel at the hearing, and the amicus curiae presentation by Robert Aronson, unanimously finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

1. Respondent has served as a pro tempore judge of King County Superior Court on a total of 92 separate days during the months of January, 1990 through October, 1990.

2. Respondent is a senator from Legislative District 43 in the Washington State Legislature and serves as a member of the Senate Law and Justice and Ways and Means Committees. Respondent has held that position while serving as a judge pro tempore.

3. On August 13, 1990, respondent was sent a letter from the Commission on Judicial Conduct informing respondent a verified statement was filed in accordance with WAC 292-12-010(4) and the Commission was pursuing initial proceedings. Enclosed in the letter was a Statement of Allegations.

4. Ethics Advisory Committee Opinion 86-10 issued July 14, 1986, responded to the question, "Is it proper for a member of the Washington State Legislature to sit as a pro tempore judge?", by

answer, "No, it is not proper for a member of the Washington State Legislature to sit as a pro tempore judge as CJC 7(A) political activities are not among those CJC provisions from which compliance requirements are removed for pro tempore judges in CJC Preamble 1(B)(1)."

#### CONCLUSIONS

1. The Preamble to the CJC provides as follows:

**1. Compliance With the Code of Judicial Conduct.** Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

. . .

**B. Judges Pro Tempore.** Judges pro tempore are persons who are appointed to act temporarily as judges.

(1) While acting as such, judges pro tempore are not required to comply with Canon 5(C)(2), (C)(3), (D), (E), (F) and (G), and Canon 6(C)....

The foregoing language of the Preamble to the CJC clearly states that there are no situations in which judges pro tempore are exempted from the provisions of the Code of Judicial Conduct except those specifically set forth in Section 1(B)(1) of the Preamble. Therefore, respondent is bound to comply with all other provisions of the Code of Judicial Conduct.

2. Article IV, Section 7 of the Washington State Constitution provides in part, as follows:

A case in the superior court may be tried by a judge, pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court and sworn to try the case.

This provision does not exclude the adoption of a code of ethics regulating the behavior of judges pro tempore. Inherent in the right of the Court to approve judges pro tempore is the right to adopt ethical rules to regulate their conduct.

3. The model Code of Judicial Conduct adopted at the annual meeting of the House of Delegates of the American Bar Association has not been adopted in the State of Washington and is without any force or effect in this State. Therefore, the provisions of the 1990 model Code of Judicial Conduct are irrelevant to this proceeding.

4. While serving as a judge pro tempore, respondent also served as a Senator from Legislative District 43 in the Washington State Legislature and in that position as a member of the Senate Law and Justice and Senate Ways and Means Committee. These Committees have substantial responsibilities in enacting laws and regulating the Courts and the judicial system. The dual service could cause substantial concerns in the minds of the public as to the integrity and independence of respondent while serving in a judicial position and could seriously affect public confidence in the integrity and impartiality of the judiciary. Respondent's activities as a partisan member of the state legislature constitutes partisan

political activity. The Commission concludes that this conduct constitutes a clear violation of the CJC Canons 1, 2(A), 7(A)(1), 7(A)(3) and 7(A)(4) which provide as follows:

**CANON 1**

**Judges Should Uphold the Integrity and Independence of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining, and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of this judiciary may be preserved. The provisions of this code should be construed and applied to further that objective.

**CANON 2**

**Judges Should Avoid Impropriety and the Appearance of Impropriety in All Their Activities**

(A) Judges should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

**CANON 7**

**Judges Should Refrain From Political Activity Inappropriate to Their Judicial Office**

(A)(1) Judges or candidates for election to political office should not:

(a) act as leaders or hold any office in a political organization;

. . .

(A)(3) Judges shall resign their office when they become candidates either in a party primary or in a general election for a nonjudicial office, except that they may continue to hold their judicial office while being a

candidate for election to or serving as a delegate in a state constitutional convention, if they are otherwise permitted by law to do so.

(A)(4) Judges should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

5. The Commission is aware that in the exercise of its constitutionally mandated duties, it may be called upon to censure or reprimand a judge pro tempore. Under WAC 292-12-130, the Commission is required to order a judge to appear personally before it to receive a censure or reprimand. As an agency of the judicial branch of government, the Commission believes the separation of the branches of government is improperly eroded by the fact that a judge pro tempore, who is also a member of the legislative branch of government, must appear before the Commission to receive a reprimand or censure.

6. Respondent has volunteered to cure any appearance of impropriety by recusing herself from any matters on the Senate Law and Justice and Ways and Means Committees which concerned the Commission on Judicial Conduct. Respondent has been elected to politically serve the public and the citizens of the 43rd district in the Washington State Senate, and she should continue to do so. The offer to recuse herself is tacit acknowledgment of the inherent conflict of interest in a legislator also serving as a judge pro tempore, subject to scrutiny by the Commission on Judicial Conduct.

7. In reaching the above conclusion, the Commission is mindful of the opinions of the Washington State Supreme Court in In re

Staples, 105 Wn.2d 905, 910 (1986) and In re Kaiser, 111 Wn.2d 275 (1988) wherein the Washington State Supreme Court has made it clear that the CJC does not permit the mixing of partisan political activities and judicial service.

8. Respondent has suggested that, notwithstanding the canons of judicial conduct, legislators should be permitted to serve as judges pro tempore because of a shortage of elected judges and a back log of untried cases. The Commission concludes, however, that expediency should not reign over ethics. If there is a need for more judges and courtrooms, the solution is not to whittle the canons of judicial conduct but to provide the necessary resources for more courtrooms and elected judges.

9. The Commission is an administrative body charged with determining violations of the Code of Judicial Conduct, conducting proceedings and recommending actions to be taken. The Commission has no constitutional or statutory authority to determine the constitutionality of specific Canons.

10. Respondent continued serving as a judge pro tempore on a regular basis after notice of Ethics Advisory Committee Opinion 86-10 and after notification from the Commission that a verified statement had been filed. Such conduct in light of the notice and warnings, while not egregious conduct, does constitute conduct that is greater than a minor violation of the Canons.

ORDER OF CENSURE

Based upon the foregoing Findings of Facts and Conclusions, the Commission determines that respondent violated Canons 1, 2(A), 7(A)(1), 7(A)(3) and 7(A)(4) of the CJC and hereby censures respondent. In addition, it is the decision of the Commission that as a specified corrective course of action, respondent shall no longer serve as a judge pro tempore until such time as she is no longer a member of the Washington State Legislature.

DATED this 4<sup>th</sup> day of January, 1991.

By: Dale Brighton  
Dale Brighton

By: Thomas E. Kelly  
Honorable Thomas E. Kelly

By: Sharon Mast  
Sharon Mast


By: Santos U. Ortega  
Santos U. Ortega


By: P. Praeger  
Pamela T. Praeger

By: Hal V. Reasby  
Hal V. Reasby

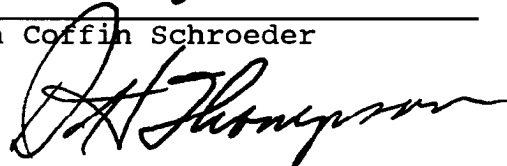


The following members of the Commission concur with the findings and conclusions stated herein and the specified corrective course of action, but disagree only with the sanction imposed. The sanction proposed by the following members is a reprimand. The following members believe that the respondent's conduct is more than a minor violation of the Code of Judicial Conduct, as a reprimand is defined in WAC 292-08-030(13), but that respondent's conduct does not fall to the level of a censure in all its elements as defined in WAC 292-08-030(2).

By:   
Steven A. Reisler, Chairperson

By:   
Wesley A. Nuxoll

By:   
Ruth Coffin Schroeder

By:   
Honorable Donald H. Thompson