

FILED
OCT 10 1990
COMMISSION ON
JUDICIAL CONDUCT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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)	ANSWER TO STATEMENT
Court of King County.)	OF CHARGES
)	

Pursuant to WAC 292-12-030 (5) of the Commission on Judicial Conduct Rules as revised and adopted on December 5, 1989 ("CJCR"), this Answer is filed by Honorable Janice Niemi, ("Respondent"), Pro Tem Judge of the Superior Court of King County, Seattle, Washington to the Statement of Charges.

1. Respondent has served as pro tempore judge of King County Superior Court in 1990.

2. Respondent is a State Senator elected from the 43rd Legislative District and has been throughout 1990.

3. Respondent denies violating Canons of Judicial Ethics 1, 2 and 7.

Respondent will supply a memorandum of authorities to the commission at a later date based upon the following affirmative

T

1
2
3 defenses.

4 1. The Washington State Constitution Article IV, Section 7
5 reads in pertinent part as follows:

6 A case in the Superior Court may be tried
7 by a judge, pro tempore, who must be a
8 member of the bar, agreed upon in writing
9 by the parties litigant, or their attorneys
10 of record, approved by the court and sworn
11 to try the case.

12 Accepted statutory construction is such that specific
13 conditions, as the four listed here, would exclude any general
14 modification, or additions to the constitutional requirements.

15 2. Ethics Advisory Committee Opinion 86-10 of July 14,
16 1986 which advises that it is not proper for a member of the
17 Washington State Legislature to sit as a pro tempore judge could
18 arguably apply to the non-constitutional courts for limited
19 jurisdiction. However a 1988 informal Attorney General's
20 decision is to the contrary.

21 3. Respondent's status as a State Senator does not violate
22 the separation of powers doctrine because her legislative status
23 does not interfere with the court's functioning. The doctrine
24 does not mandate that each branch of government maintain its own
25 exclusive sphere of competence. Zylstra v. Pira, 85 Wn. 2d
26 743, 749, 539 P. 2d 823 (1975). Mere combination of functions,
27 without a showing of actual bias, does not raise a
28

1
2
3 constitutional issue. Smith v. Mount, 45 Wn, App. 623, 726 p.
4 2d 474, Review denied, 107 Wn 2d 1016 (1986). The United States
5 Supreme Court's opinion in Mistretta v. United States,
6 ___U.S.___, 102 L. Ed. 2d 714, 746-753, 109 s. ct. 647, 667-673
7 (1989) reviewed a situation where executive and judicial
8 functions seemed to overlap. The court held that appointing
9 federal court judges to serve on the United States Sentencing
10 Commission, an executive agency, did not impermissibly interfere
11 with the functioning of the judiciary.

12 4. The Model Code of Judicial Conduct (1990) adopted at
13 the Annual Meeting of the House of Delegates of the American Bar
14 Association does not require pro tempore judges to comply with
15 code requirements prohibiting acting as an arbitrator, mediator
16 or otherwise perform judicial functions in a private capacity
17 (4F), or holding office in a political organization (5A(1)), or
18 engaging in political activity (5D.).

19
20 5. A judge pro tem is not a superior court judge and can
21 make no claim to the office of superior court judge. Both
22 Constitutional article 4, sec 7 and R.C.W. 2.08.180 clearly
23 state the four elements for valid appointment of a judge pro
24 tem. (National Bank of Wash. v. McCrillis, 15 Wn. 2nd 345, 130
25 p. 2d 901, 144 A.L.R. 1197 (1942)).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Whereby, respondent respectfully requests the commission to
dismiss the case.

DATED this 5th day of October 1990.

Janice Niemi
Janice, Niemi
Respondent