**BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON**

In Re the Matter of:	)	
	)	
Honorable Gary W. Velie	)	90-946-F-25
Judge, Clallam County	)	
Superior Court	)	**COMMISSION DECISION**
	)	

A Fact Finding Hearing was held pursuant to Commission on Judicial Conduct Rules as ordered by the Commission on Judicial Conduct (the "Commission") on December 9 and 10, 1991. Members of the Commission present were G. Douglas Ferguson (presiding), Judge Harold D. Clarke, Ruth Coffin Schroeder, Nancyhelen Fischer, Judge Thomas E. Kelly, Judge John A. Petrich, Pamela T. Praeger, Dale Brighton, K. Collins Sprague, and Harold Clarke III.

Respondent Judge Gary W. Velie appeared in person and was represented by Kurt M. Bulmer, attorney. The Commission was represented by David D. Hoff and Scott Schrum. Witnesses were sworn and heard; exhibits were admitted; counsel gave arguments.

Having heard and considered the evidence, and having considered the argument of counsel, the Commission finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

1. The Honorable Gary W. Velie (hereinafter "Respondent") is now, and at the time of the acts described herein was, a judge of the Clallam County Superior Court, Port Angeles. There are two superior judge positions in Clallam County.

2. Respondent was appointed a Superior Court judge in Clallam County in November, 1983. He was elected to the position in 1984 and served continuously thereafter.

3. In a prior proceeding, No. 88-626, Respondent received a letter from the Commission dated April 11, 1988 and a Statement of Allegations specifying racist and sexist language, embarrassing jokes, and ex parte contacts. On May 4, 1988, the Commission received a letter from Respondent acknowledging the use of racist and sexist language and embarrassing jokes. On May 12, 1988, the Commission invited Respondent to appear before it and discuss his response. Respondent appeared on June 2, 1988 and expressed a positive attitude and willingness to take corrective action on the allegations, and the Commission notified him of the dismissal of the matter on June 7, 1988, based upon respondent's willingness to take corrective action.

4. In a matter not dealt with in the Commissions's prior proceeding, on or about May 12, 1988, Respondent presided over In Re the Alternative Residential Placement of E.W.K, Cause No. 4915, which was a proceeding to determine whether E.W.K. should be

temporarily placed with foster parents. Respondent could find no "articulable" reason for the E.W.K.'s problem, and E.W.K. did not confide in anyone else. Respondent in open court and in the presence of counsel for all parties stated:

> THE COURT: Tell you what it is: Anything you tell him [Mr. Shea] is absolutely secret. Nobody can make him tell anybody. If you tell him and you tell him not to tell anybody, he can't. His ethics will not allow him to do that but at least if you are telling Mr. Shea what your problems are or why, you can allow him to assist the rest of us. He doesn't have to tell your secrets but at least he can push around the edges so that I don't make some stupid error.
>
> You know how long you spent in my courtroom now, what, half-hour total since this thing started? I'm the guy calling the shots. You have heard everything that I have heard.
>
> There's obviously more to it than I know about and I think you better start coming clean with somebody and letting them know why or what the problem is.
>
> If you want to talk to me and not let anybody else know that you are doing it, I'm open to that, too.
>
> You can come up and see me at any time and I won't tell Mr. Shea or Mrs. Jackson or your mom or Mr. _____ that you have been here, if there's something you want me to know. I'm open to having you tell me about it because I'm trying to help you and, apparently, you are not going to be able to do it by yourself.
>
> You just can't beat this thing by yourself. You are going to have to get some help, and we are all here to help you make it.
>
> I don't know what else to tell you.
>
> MR. SHEA: We'll try.

Exhibit 3, pages 24-25 [emphasis supplied]. Counsel did not object. Although Respondent had no recollection of meeting with E.W.K., the evidence shows that Respondent did meet with E.W.K. alone fifteen minutes after the hearing.

5. Subsequent to his appearance before the Commission in 1988, Respondent made a remark to attorney John Doherty in open

court and in front of court reporter Penny Wolfe and clerk Tammy Woolridge that he [Doherty] looked like he had been "jacking off a bobcat in a phone booth". Mr. Doherty was embarrassed by the remark. Although the precise date is not clear, Respondent concedes that such remark was made sometime in 1989.

6. In 1990, during the armed conflict between the United States and Iraq, Respondent remarked: "Nuke the sand niggers" in reference to Respondent's solution to the Mid-East crisis. The comment was made in the presence of others in the clerk's office coffee room in the courthouse.

7. On May 14, 1990 while in the course of discharging his duties in the Hammer and Beaudry v. Foster case, Respondent, attorney David Bendell, and attorney John Doherty went together on a view of the property. Respondent drove in his car. Respondent stated that "Johnny," a defendant in an old case, "had gone crazy from sucking too many cocks."

Mr. Bendell was and is concerned that Respondent may be prejudiced against homosexuals. If he represented a homosexual, or where there was a major witness who was a homosexual, Mr. Bendell would feel obliged to tell his client that there might be a problem and perhaps they should affidavit the judge.

8. During the sentencing proceeding conducted in State v. Sampson on May 17, 1991 involving an indigent defendant, Respondent said:

> THE COURT: Judging from the business at the food bank of which my wife is president, there are not many

starving people. There's a lot of them too stupid to cook what they are given but nobody is starving.

MR. HAYDEN: I'm sorry?

THE COURT: I say, there's a lot of them that are too stupid to cook what they are given.

In other words, if you don't give them a Kraft dinner with the instructions written on the box, you give them other normal food, they don't know how to cook it.

They run into that frequently, but nobody has ever been turned away because they needed food.

Exhibit 7, page 113.

CONCLUSIONS

1. The Canons of Judicial Conduct (CJC) 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 the 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. . . conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

CANON 3

Judges Should Perform the Duties of Their Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. * * * In the performance of these duties, the following standards apply:

(A) Adjudicative Responsibilities

* * *

(2) Judges should maintain order and decorum in proceedings before them.

(3) Judges should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom judges deal in their official capacity. . . .

(4) Judges should. . ., except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.

* * *

(6) Judges should abstain from public comment about a pending or impending proceeding in any court. . . .

2. The conduct described in Finding No. 4 constituted a violation of Canon 2(A) of the CJC.

3. The conduct described in Finding No. 5 constituted a violation of Canons 1, 2(A) and 3(A)(3) of the CJC.

4. The conduct described in Finding No. 6 constituted a violation of Canons 1 and 2(A) of the CJC.

5. The conduct described in Finding No. 7 constituted a violation of Canons 1, 2(A), and 3(A)(3) of the CJC.

6. The conduct described in Finding No. 8 constituted a violation of Canons 1, 2(A) and 3(A)(3) of the CJC.

7. The Washington State Supreme Court discussed factors used to determine appropriate sanctions for violations of the CJC:

> To determine the appropriate sanction, we consider the following nonexclusive factors: (a) whether the misconduct is an isolated instance or evidence 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; and (j) the extent to which the judge exploited his position to satisfy his personal desires.

In re Deming, 108 Wn.2d 82, 119-120.

8. Judge Velie was involved with multiple incidents and comments which evidenced a pattern of inappropriate behavior which detracted from the dignity and honor of the judicial office he holds. Judge Velie frequently used coarse language which, when viewed in isolation, are relatively minor in nature, however, do contribute to the pattern of inappropriate behavior. Judge Velie's conduct and remarks occurred both in and outside the courtroom while in the course of his official duties, and continued in his private life.

Judge Velie has been a judge for over 8 years. During his tenure, there have been complaints about comments made by him. Since the charges filed in 1988 by the Commission, there have been no further complaints in the area of sexual harassment. However, other than sexual harassment remarks, Judge Velie has made the same general types of comments that were the subject of the 1988 proceeding.

9. Judge Velie acknowledged or did not deny that the incidents or comments described in Findings 4, 5, 6, 7 and 8 occurred. Judge Velie did not exploit his position to satisfy his personal desires.

10. In the instant case, Judge Velie has shown a pattern of behavior that is similar to conduct alleged by the Commission in 1988, and for which Judge Velie stated he would correct. A judge with his tenure on the bench should exhibit appreciation for the high position that he holds and govern his conduct accordingly. This, Judge Velie failed to do. As a result, Judge Velie's misconduct has had a negative effect on the judiciary and caused concern about the judge's impartiality on the part of attorneys who appear before him.

11. The appropriate sanction for respondent's misconduct is a reprimand.

ORDER OF REPRIMAND

Based on the foregoing Findings of Fact and Conclusions, the Commission determines that respondent violated Canons 1, 2(A), and 3(A)(3) of the CJC and hereby REPRIMANDS Respondent and Orders him to take the following Corrective Actions:

1. Cease and desist from making disparaging or embarrassing comments while in the performance of his official duties and while in and about the courthouse, whether or not such comments are made in jest;

2. Refrain from ex parte contact or communications which may give the appearance of ex parte contact with persons involved in the proceedings;

3. Take no retaliation, directly or indirectly, against witnesses or other persons who cooperated with the Commission in its investigation and proceeding;

4. Attend, participate and complete a course or courses selected by respondent and approved by the Commission concerning judicial conduct at the National Judicial College within one year of this decision;

5. The Commission shall monitor compliance with this Order, and Judge Velie shall cooperate with such monitoring.

DATED this 7th day of February, 1992.

(see attached Opinion)
G. Douglas Ferguson, Presiding

Pamela T. Praeger

Ruth Coffin Schroeder

Dale Brighton

Nancyhelen Hunter Fischer

(see attached Opinion)
Honorable Harold D. Clarke, II

Honorable Thomas E. Kelly

Harold D. Clarke, III

(see attached Opinion)
Honorable John A. Petrich

(see attached Opinion)
K. Collins Sprague

Concurring in part and dissenting in part.

The undersigned member(s) of the Commission concurs in part and dissents in part with the Findings and Conclusions stated herein.

My dissent relates to Finding No. 7. This matter relates to the view of the property in the case of Hammer and Beaudry v. Foster. Present in Judge Velie's car were Attorneys David Bendell and John Doherty. Mr. Bendell, who was in the back seat of the car, recalls the Respondent making a homophobic remark about an old case involving "Johnny". The Respondent did not recall the statement. Mr. Doherty unequivocally denied that the statement occurred. It is to be noted that Mr. Bendell, in the same case, was chagrined about remarks that Respondent made in chambers regarding Mr. Bendell's handling of the case - specifically wasting time on extraneous issues. Mr. Doherty's recollection of these later remarks by the Respondent was that they were warranted by the action of Mr. Bendell.

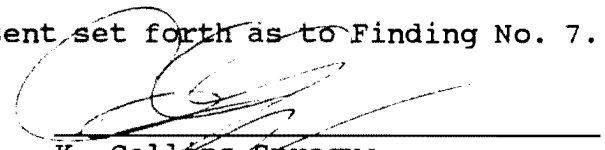
It may be that the majority would be correct in their finding if the normal burden of proof in a civil matter, to wit: preponderance of the evidence was the requirement. But considering the conflicting testimony and possible bias of Mr. Bendell, it is my opinion that the required proof, which is by clear, cogent and convincing evidence, has not been met.

A quick review of Finding No. 8, the incident that arose in State v. Sampson on May 17, 1991, is needed to obtain a proper perspective. The testimony indicated that through the Respondent's wife, the Respondent obtained knowledge that indicated a large amount of food from the Food Bank was not being property utilized. In addition, the remarks of counsel involved did little more than cloud the issue. What Respondent said was not proper and the finding is appropriate, but there is a reasonable explanation for the remark which should be kept in mind, when considering an appropriate sanction.

I feel constrained to comment on the sanction imposed. In preliminary discussions the undersigned felt that admonition would be the proper sanction. This was based in part on testimony that indicated that the Respondent was industrious, conscientious and well versed in the law. He is well liked in the community and generally respected as a jurist. But after careful consideration, and in particular considering that during prior contact with the Commission, specific direction was not given to the Respondent, a reprimand with the concomitant requirements is the better sanction to impose now. Except for Finding No. 7, Conclusion No. 5 and Conclusion No. 2 (discussed separately), I concur with the majority Decision and the sanctions imposed therein.

Honorable Harold D. Clarke, II

I concur with the above dissent set forth as to Finding No. 7.



K. Collins Sprague

Concurring in part and dissenting in part.

I concur with the Commission's majority Decision and sanctions imposed, and the Findings and Conclusions, except as follows: I dissent from Finding No. 7 and Conclusion No. 5 for the reasons set forth by the Honorable Harold D. Clarke, II and from Conclusion No. 2 for the reasons stated herein.

Several allegations of ex parte contact were cited in the Amended Statement of Charges. For all but one charge, the Commission found no violation. I concur where such charges have been dismissed. However, I dissent from Conclusion No. 2, wherein it is asserted the Respondent had engaged in ex parte contact in the matter of In re the Alternative Residential Placement of E. W. K. ("Wayne").

The incidence of alleged ex parte contact in this matter constituted two distinct events. One being the Respondent's invitation for Wayne to meet with him without counsel; and the other being their private conversation, which, according to Wayne, occurred immediately after the hearing.

Although unorthodox, the Respondent's suggestion that Wayne confer with him was not ex parte contact per se. It was made in open court and in the context of other options proffered by the Respondent. Furthermore, since the Respondent's invitation was publicly conveyed, counsel was afforded an opportunity to object

and/or to stipulate conditions. No such objection was made. The Commission must acknowledge the competence of counsel present at the hearing, absent any evidence to the contrary, and it can reasonably conclude that counsel should have expected that a meeting might eventually, if not inevitably, occur. It is plausible, incidently, that counsel was aware of the meeting when it took place, as it transpired soon after the hearing. By failing to object to Respondent's offer during the hearing, counsel gave no less than implied consent to the conference. In light of the evidence showing that no objection was made, the Commission should not have found a violation in this circumstance.

K. Collins Sprague

I concur with the Dissenting Opinion of K. Collins Sprague with respect to Conclusion No. 2 and specifically Canon 2(A).

Honorable Harold D. Clarke, II

I concur with the Commission's majority Decision and sanctions imposed and the Findings and Conclusions except Conclusion No. 2, from which I dissent.

G. Douglas Ferguson

I concur with G. Douglas Ferguson.

Honorable John A. Petrich