

FILED

SEP 12 1991

COMMISSION ON
JUDICIAL CONDUCT

BEFORE THE COMMISSION OF JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In re the Matter of)
Honorable Gary W. Velie,) NO. 90-946-F-25
Judge, Clallam County) ANSWER TO STATEMENT
Superior Court.) OF CHARGES

COMES NOW, the Honorable Gary W. Velie, by and through his attorney Kurt M. Bulmer, and answers the Statement of Charges dated August 16, 1991, filed by the Commission of Judicial Conduct against him, as follows:

ADMISSION AND GENERAL DENIAL

1. Respondent admits that on September 28, 1990, he was sent a letter stating that the Commission was pursuing Initial Proceedings.

2. Because of restrictions found in juvenile dependency confidentiality laws, because of the lack of sufficient facts and details to be able to fairly determine the charges against him, and because of his right to require the State to prove the allegations against him, Respondent enters a general denial as to the remaining portions of the Statement of Charges. By doing so he puts the State to its proof as to each and every factual allegation made in its Statement of Charges and to each and

1 every element of the Code of Judicial Conduct he is alleged to
2 have breached.

3 JURISDICTION AND OTHER DEFENSES

4 By way of further response Respondent asserts:

5 3. As to those matters asserted in the Statement of Charges
6 but which were not identified in the Verified Statement and the
7 letter about the Initial Proceedings, the Commission is
8 proceeding without authority and beyond the scope of its powers.

9 4. As to all matters which relate to factual events
10 occurring before June 7, 1988, and which the Commission had
11 previously investigated in matter 88-626, the Commission is
12 estopped from bringing or presenting charges based on these
13 matters since they have been dismissed by the Commission after a
14 proceeding before the Commission. The Commission may not now use
15 those events in the pending proceeding. For the Commission to do
16 so is a denial of due process of law and fundamental fairness,
17 is estopped by collateral estoppel and res judicata principles
18 and is prevented by laches.

19 5. As to all matters involving legal determinations as to
20 the interpretation of statutes, case law or court rules as they
21 relate to judicial determinations made in Respondent's official
22 capacity as Superior Court judge, the Commission is without
23 authority to review such matters and may not impose its
24 judgement as to decisions made by the Respondent on matters of
25 law. This includes:

- 26 A. Respondent's interpretation of the statutory question of
27 who is or is not properly a party within the scope of a
28 juvenile dependency proceeding and who is or is not

1 entitled to records of such proceedings. This relates to
2 the Commission's allegations involving Terwilliger, Rohr,
3 both Cawyers, and Baublits.

4 B. Respondent's interpretation of the legal question of when
5 he must or must not recuse himself from a case. This
6 relates to the Commission's allegations involving both
7 Cawyers and Baublits.

8 C. Respondent's interpretation of the legal question of what
9 he must read as part of his evidence taking. This relates
10 to the Commission's allegations involving both Cawyers
11 and Baublits.

12 D. Respondent's interpretation of the legal question of the
13 applicability and application of Clallam County Superior
14 Court Local Rule 40(f), in conjunction with the
15 applicable provisions of the RCW and established
16 precedent. This relates to the Commission's allegations
17 involving Clallam County Superior Court Local Rule 40(f).

18 6. As to all matters which are protected by the
19 confidentiality provisions of the juvenile dependency
20 provisions, which matters include the Terwilliger case, the Rohr
21 case, both Cawyer cases, and the Baublits case, Respondent will
22 be unable to adequately defend such matters without complete use
23 of the files in the open Commission hearing. Respondent cannot
24 use such files in open proceedings without breaking the law.
25 Without the full and open use of such files Respondent cannot
26 adequately defend these matters and to require him to do so
27 would be a denial of due process and fundamental fairness.
28

Respondent is fully prepared to defend his actions in connection with these cases but must have the full files available to do so.

7. As to the allegations made in connection with the Oakes case, Respondent denies that he ever sat as a judge on such matter and therefore any allegation that he had improper ex parte contact is wrong as a matter of law and any opinion he may have expressed to Mr. Lavin is protected free speech.

8. As to allegations made concerning comments made at a meeting with medical personnel, Respondent denies making the specific statement that "it would be desirable to have a stun gun to use in dealing with patients in involuntary treatment" and asserts that any related type statement which may have occurred is protected by the rights of freedom of speech, freedom of assembly, and freedom to express an opinion and are reasonably related to a legitimate judicial purpose, namely safety of the public, court room personal and the judge during involuntary treatment proceedings.

9. As to allegations that Respondent has made offensive racist and sexist remarks and has made inappropriate and disparaging remarks, Respondent has not been provided with sufficient details to respond to these allegations or raise his defenses. Such detail has been promised to Respondent. Until such time as there is sufficient detail provided, Respondent reserves his right to raise his defenses. Such defenses include but are not limited to freedom of speech, freedom of assembly, freedom to express a political opinion, vagueness, lack of jurisdiction of the Commission, laches, double jeopardy,

1 collateral estoppel, res judicata and judicial independence.

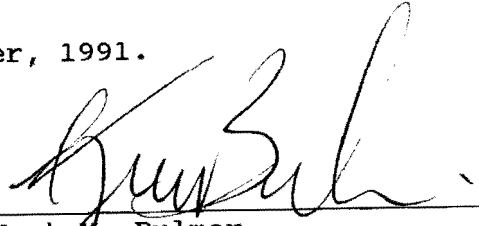
2 11. The Commission's allegations that Respondent has made
3 offensive racist and sexist remarks and has made inappropriate
4 and disparaging remarks is, essentially, an allegation that
5 Respondent has failed to engage in "politically correct" speech.
6 The Commission lacks jurisdiction to impose its determination of
7 what is politically correct speech upon an elected public
8 official and in attempting to do so in this proceeding is
9 outside of its constitutional and statutory jurisdiction.

10 12. Respondent is unable to answer as to the specific
11 provisions of the Code of Judicial Conduct he is asserted to
12 have violated since the Statement of Charges does not identify
13 with sufficient specificity which parts of the provisions
14 identified are asserted to have been violated nor does the
15 Statement of Charges identify which provisions relate to the
16 specific factual allegations made. Respondent has been promised
17 such detail and reserves his right to Answer once that detail is
18 provided. Absent such detail Respondent is unable to defend
19 since he does not know with sufficient specificity what
20 provisions of the Code he is alleged to have violated in
21 connection with which charges. He is entitled to such notice
22 under principles of due process, fundamental fairness and equal
23 protection.

24 REQUEST FOR DISMISSAL

25 Respondent denies he has acted improperly and asks that all
26 allegations made against him be dismissed.
27
28

1 Dated this 10th day of September, 1991.

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3 
4 Kurt M. Bulmer
5 Attorney for Respondent
6 WSBA # 5559

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