

BEFORE THE COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON

FILED  
JUN 4 1995

COMMISSION ON  
JUDICIAL CONDUCT

In Re the Matter of )  
 )  
Honorable John P. Junke )  
Walla Walla District Court )  
328 W. Poplar )  
Walla Walla, WA 99362 )  
\_\_\_\_\_ )

No. 91-1137-F-34

COMMISSION DECISION

I. INTRODUCTION

A fact-finding hearing relating to the above-entitled matter was held on December 10, 11 and 12, 1992 in Walla Walla pursuant to order of the Commission on Judicial Conduct and WAC 292-12-040.

Members of the Commission on Judicial Conduct present as a fact-finding subcommittee were Honorable Harold D. Clarke, II (presiding officer), Dale Brighton and David Armstrong.

Respondent was present with his counsel, Kurt Bulmer. The Commission was represented by its counsel, Edward F. Shea.

The Commission subcommittee heard and considered the testimony of the witnesses called, reviewed the stipulations, exhibits and records herein, and considered the arguments of counsel and the briefs submitted by each of them. At the conclusion of the Commission's case in chief, the respondent, through his counsel, made a motion to dismiss various charges for failure to present sufficient proof to allow these matters to go forward. The panel granted the motion as to some of the charges, and the charges that were dismissed are listed and shown on Appendix 1 attached hereto.

The Commission subcommittee issued a Report and Recommendation finding four violations of the Code of Judicial Conduct. The subcommittee recommended that respondent be admonished.

On February 3, 1993, Commission counsel filed "Objections to Report of Fact Finder Dated January 15, 1993." On February 4, 1993, respondent filed a response. The Commission accepted the findings of the Fact-finder and declined to hear further argument concerning them. The Commission set a briefing schedule, and set a hearing on April 2, 1993 for the objections concerning the proposed sanctions.

At the hearing on the objections, respondent Hon. John P. Junke appeared pro se; the Commission was represented by its counsel, Ed Shea.

Having heard or read the evidence, and having considered the arguments of the parties, the Commission finds by clear, cogent, and convincing evidence the following:

## II. FINDINGS OF FACT

A. Respondent is now, and at all times relevant herein, a judge of the Walla Walla County District Court and the Walla Walla Municipal Court in Walla Walla, Washington. Respondent was elected in November, 1990 and took office in January, 1991.

B. Charge 2(d) - Phillips:

1. Under charge 2(d), the case of State v. Robert Phillips, the charge concerns a number of affidavits of prejudice filed against Judge Junke by Attorney Delaine Swensen. Mr. Swensen was an associate in the office of Barton Jones, and Mr. Jones and Mr. Swensen held the public defender contract from the City of Walla Walla to represent indigent defendants in Judge Junke's municipal court.

2. Judge Junke and Delaine Swensen exchanged correspondence about

the propriety of the affidavits of prejudice. On or about May 22, 1992, Judge Junke wrote to Barton Jones (see exhibit 23, section I) and mentioned the number of affidavits filed and the impact on municipal court. Judge Junke asked Barton Jones to contact him before Judge Junke requested the City Counsel to invoke the cancellation provisions of the indigent contract.

3. Judge Junke also wrote to the City Manager of Walla Walla (see exhibit 2, Section II) and advised he would not approve a renewal of the contract for legal services for indigent criminal defendants with the current provider (Barton Jones).

4. The evidence introduced showed that Barton Jones and Delaine Swensen were properly performing the duties required of them under the contract.

C. Charge 2(d) - Veracruz:

Under charge 2(d) in the case of State v. Gilberto Veracruz, the charge concerns a finding of contempt by Judge Junke against Deputy Prosecuting Attorney Matt Rutt. Mr. Rutt appeared before Judge Junke and presented an agreement with defense counsel which would dispose of the charges. A colloquy between Judge Junke and Mr. Rutt ensued relating to the reasons for the agreement and the reduction of the charges. At the end of the colloquy Judge Junke directed Mr. Rutt to issue a warrant for a state trooper, who was a key witness. Mr. Rutt refused to have the trooper arrested, and Judge Junke held Mr. Rutt in contempt for refusal to obey his order and placed him under arrest in the courtroom.

D. Charge 3 - Weaver:

Under charge 3 in the case of the City of Walla Walla v. Grant Arthur Weaver, Judge Junke visited Mr. Weaver in the jail, after Mr. Weaver was arrested on a

failure to appear arising out of a traffic ticket. Mr. Weaver told Judge Junke that the ticket as not his, but was his brother's. Judge Junke released Mr. Weaver without setting a court appearance date. Judge Junke instructed one of his staff to talk to the arresting officer about the identity of the person who received the ticket. The staff person talked to Officer Moses and wrote a memo to Judge Junke and to the file that Mr. Weaver was the person who was driving the vehicle when the ticket was issued. Judge Junke then wrote to Mr. Weaver about the communication with the officer and advised Mr. Weaver to appear in court. (See exhibit 3, section I.)

E. Charges 4 and 5 - Kleespies:

1. Under charges 4 and 5 in the case of State v. Joseph Kleespies, on or about December 13, 1991 Judge Junke wrote a memo (see exhibit 6, section I) in which he discussed deficiencies in the building where district and municipal court are held (county annex). In the memo, Judge Junke discussed the likelihood that he would have to dismiss a citation because of the inability of a disabled defendant to get access to the courtroom.

2. Mr. Kleespies was charged with driving while under the influence and had knee surgery before the court hearing date. Mr. Kleespies intended to plead guilty to the charge and his attorney and the deputy prosecuting attorney met with Judge Junke in chambers to advise him of the plea. Mr. Kleespies remained in a vehicle in the parking lot. The attorneys suggested several possible methods for the court to take the guilty plea. Judge Junke sua sponte dismissed the ticket. There were other reasonable alternatives available to physically take the plea.

3. Judge Junke wrote a memo on October 29, 1992 (see exhibit 22, section II), in which he stated that on several previous occasions he had already indicated what he

would do when a disabled defendant could not gain access to his courtroom.

4. In Judge Junke's memo to the Commission on Judicial Conduct dated May 6, 1992 (exhibit 22, section I, page 18), Judge Junke discussed inadequacies of the courthouse annex and suggested he would not get anywhere with the county commissioners until a highly publicized case got dismissed or someone fell down the stairs.

### III. CONCLUSIONS

A. In connection with the case of State v. Phillips found under charge 2(D), the action by Judge Junke threatening to cancel the public defender contract over the filing of the affidavits of prejudice by Delaine Swensen was a violation by Judge Junke of the Code of Judicial Conduct Canons 1 and 2(A).

B. In the case of State v. Veracruz, Judge Junke, by arresting Deputy Prosecuting Attorney Matt Rutt, violated the Code of Judicial Conduct Canons 2(A) and 3(A)(3). Judge Junke lost control of his temper and failed to maintain patience and proper decorum in his courtroom.

C. In City v. Weaver, Judge Junke gathered and considered evidence in this case outside of a trial without consent of the parties in violation of the Code of Judicial Conduct Canons 1, 2 and 3(A)(4).

D. Judge Junke, by his actions in dismissing the DWI charge sua sponte in the case of State v. Kleespies when there were other reasonable alternatives for taking the plea, violated the Code of Judicial Conduct Canons 1, 2(A), 3(A)(1) and 3(A)(3).

E. The Commission finds that the following charges were not sustained by clear, cogent and convincing evidence:

Charge 2(b): 1. State v. Robert Phillips

2. City v. Grant Arthur Weaver
  3. City v. Kurt B. Ogden
  4. City v. Steven Gonzales
  5. City v. Donald Bates
- Charge 2(c):
1. State v. Manual Lara
  2. State v. Robert Phillips
  3. State v. Kurt B. Ogden
  4. State v. Donald Bates
  5. State v. Scott E. Brown
  6. City v. Arthur A. Weaver
  7. State v. Lyonnais
- Charge 2(d):
1. State v. Juan Torres
- Charge 3:
1. City v. Steven Gonzales
- Charge 4:
1. State v. Robert Phillips
  2. State v. Juan Torres
  3. State v. Gilberto Veracruz
- Charge 5:
1. State v. Gilberto Veracruz
- Charge 6:
1. Charges under paragraph six relating to misuse of the administrative powers of office.

F. Pursuant to WAC 292-12-130, the Commission on Judicial Conduct may decide to dismiss all or any of the charges in this case, or to admonish, reprimand or censure the respondent.

G. The charges identified in Conclusion E and Appendix 1 are dismissed.

H. The Commission on Judicial Conduct should take into consideration the factors outlined in In Re Deming, 108 Wn.2d 82, 119-120 (1987) and In Re Kaiser, 111 Wn.2d 275, p. 289-290 (1988), in selecting sanctions in judicial disciplinary cases. The Commission is the body charges with considering complaints that a judge has violated a rule of judicial conduct, WAC 292-08-020. The Commission takes notice of its own records in determining whether there has been prior discipline against Judge Junke and there has been none.

I. The appropriate sanction for respondent's conduct is REPRIMAND as defined in RCW 2.64.010(6).

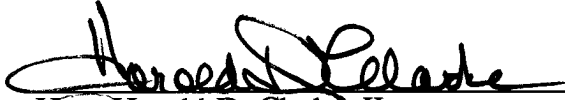
#### IV. ORDER OF REPRIMAND

Based upon the foregoing Findings of Fact and Conclusions, the Commission determines that respondent violated Canons 1, 2(A), 3(A)(1), 3(A)(3), and 3(A)(4) of the Code of Judicial Conduct, and hereby REPRIMANDS respondent and Orders him to take the following corrective actions:

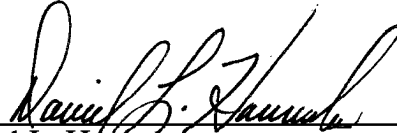
- A. Take no retaliation, directly or indirectly, against witnesses or other persons who cooperated with the Commission in its investigation and proceeding;
- B. Judge Junke shall attend, participate and complete the course, "Ethics for Judges," scheduled for October 27-29, 1993 at the National Judicial College in Reno, Nevada;
- C. Before June 1, 1994, Judge Junke shall attend another National Judicial College course of similar duration which is offered to new judges. Such course shall be selected by Judge Junke and approved by the Commission; and
- D. Judge Junke shall personally pay for all expenses connected with the courses at the National Judicial College.

Dated this 4<sup>th</sup> day of June, 1993.

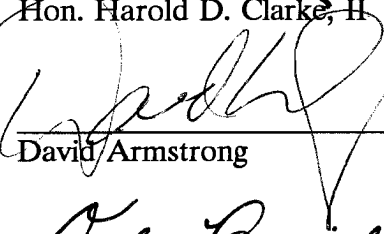
COMMISSION ON JUDICIAL CONDUCT



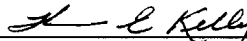
Hon. Harold D. Clarke, II



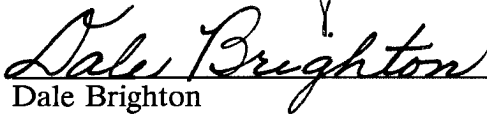
Daniel L. Hannula



David Armstrong



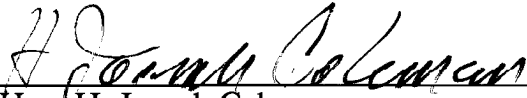
Hon. Thomas E. Kelly



Dale Brighton



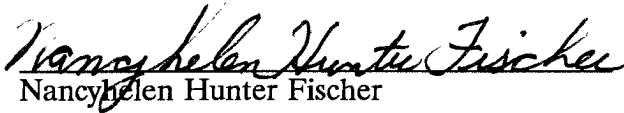
Pamela T. Praeger



Hon. H. Joseph Coleman



Ruth Schroeder




Nancyhelen Hunter Fischer

(see dissent)

Anthony Thein



I dissent from the decision reached by the majority. The recommendation of the hearing panel to admonish Judge Junke was more than sufficient sanction for what seems to me to be no more than an intramural squabble among members of a closed system. No evidence presented showed that a single defendant suffered unjust or unfair treatment in Judge Junke's court.

  
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Anthony Then

DISMISSED CHARGES

Appendix 1

Charge 2(a): State v. Juan Torres

Charge 2(c): State v. Juan Torres

Charge 3: State v. Robert Phillips

State v. Manual Lara

Charge 4: City of Walla Walla v. Kurt B. Ogden

State v. Scott E. Brown

State v. Bradley

Charge 5: State v. Bradley