

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In Re the Matter of:)
)
Honorable Robert D. Moilanen) CJC No. 91-1182-F-29
Judge, Clark County)
District Court) COMMISSION DECISION
) (Three-Member)
)
_____)

A Fact Finding Hearing was held pursuant to Commission on Judicial Conduct Rules as ordered by the Commission on Judicial Conduct (the "Commission") on November 2, 3, and 4, 1992. Members of the Commission present were Judge Donald H. Thompson (presiding), G. Douglas Ferguson, Todd Whitrock, Nancyhelen Hunter Fischer, Judge Thomas E. Kelly, Judge Gerry Alexander, Dale Brighton, Anthony Thein, and Harold D. Clarke III.

Respondent Judge Robert D. Moilanen appeared in person and was represented by his attorneys, Kurt M. Bulmer and Steven Thayer. The Commission was represented by its attorney, Curtis M. Janhunen. Witnesses were sworn and heard; exhibits were admitted; counsel gave arguments.

Having heard and considered the evidence, and having

considered the argument of counsel, and also based upon the demeanor and credibility of the witnesses, the Commission finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

1. The Honorable Robert D. Moilanen (hereinafter "Respondent") is now, and at the time of the acts described herein was, a judge of the Clark County District Court, Vancouver. There are currently five district court judge positions in Clark County.

2. Respondent was elected to District Court judge in Clark County in November, 1978 and after taking office in January, 1979, served continuously thereafter.

3. Respondent has no previous discipline of public record.

4. In January 1988 Ms. Cindy Lindberg began working at the Clark County District Court as a clerk in the administrative section. In October 1988 respondent called her to his office for an interview to be his clerk. Prior to the interview Ms. Lindberg had little contact with the judge because of the Court's physical layout. The judge's chambers and their court clerks were located on the second floor of the courthouse. The other clerks and the court administrators were located on the first floor. Prior to a court remodel, all the clerks had been located together in a common area. At that time if the judges wanted to talk with their clerks about court matters, they came to the clerks' common area.

The judges have a significant role in selecting their clerks.

There was no formal procedure for hiring a judge's clerk. The interview was brief and included the following questions: (1) Who did Cindy associate with downstairs; and (2) What did Cindy think of women's lib? Ms. Lindberg could remember no questions about her skills and abilities, and she informed respondent of her lack of experience as a judge's clerk. [Tr. 99-100] Respondent told her, I'm kind of a wild man at times, and that he swore and was profane. He asked if that would bother her, and she said it did not.

5. As respondent's clerk, Ms. Lindberg prepared his dockets, scheduled motions, scheduled trials, prepared paperwork for court, prepared paperwork in court, and disbursed papers to attorneys and agencies. It was a busy, heavy docket. It was particularly busy during arraignment week, which one clerk described as "hell week" and Ms. Lindberg described as "awful". [Tr. 117]

6. During their association, respondent and Ms. Lindberg on occasions discussed some personal matters. Respondent set the tone and she followed his rules. Joking was initiated by either of them. Ms. Lindberg was described as having a bubbly sense of humor.

Respondent described Ms. Lindberg as his friend, his confidential friend. There was no evidence that they socialized together or that she considered him to be her friend.

Other court personnel told jokes. The Court Administrator, George Miller, made jokes about respondent's height, and once left an animal carrier with the judge's picture on it. Respondent once

received a styrofoam cake for his birthday from his since-retired clerk, Ms. Joyce Porterfield. [Tr. 269, 289-290]

After she became respondent's clerk and worked on the second floor, Ms. Lindberg began to feel intimidated by him. She appeared nervous and pressured. There appeared to be a lot of friction between Ms. Lindberg and respondent. [Tr. 153]

7. Ms. Lindberg was required to perform most of her out-of-courtroom duties at her desk, which was her work station, located immediately outside respondent's office. Ms. Lindberg's practice was to sort and stack various files in a particular order on her desk. The desk had a limited work surface, and she did not have a filing cabinet. Respondent thought her desk was messy and wanted a clear surface. [Tr. 112] It usually happened during arraignment week or during sentencing, when Ms. Lindberg was away from her desk, respondent would take the files and throw or place them under her desk, in a desk drawer, in a box, or in a garbage can. [Tr. 112-113] After he handled them, the files were in disarray, in no particular order. This increased Ms. Lindberg's work by several hours, as each time she had to recollect which files had already been entered and which had not, and reorganize them, before she could proceed with her regular work. [Tr. 112-113, 223; Pusieski Dep. p. 14] There is no evidence that the manner in which Ms. Lindberg stacked and organized the files on her desk created or caused any inefficiencies in the performance of her duties, except when respondent removed them. Ultimately a filing cabinet and side

table were provided to her.

8. During the mid to late part of 1991 while at work, respondent began to call his clerk, Ms. Cindy Lindberg, a "slut" at numerous times in the presence of her co-workers. In the courthouse, respondent, in the presence or hearing of others, used the word "slut" in place of Ms. Cindy Lindberg's name when addressing her in the course of employment. He said such things as:

Get me a copy, "slut".

Well, there's Betty "bitch" and Cindy "slut".

It's time for court, "slut".

Grab the files, "slut".

It became a joke for him. [Tr. 108] Ms. Cindy Lindberg talked to the Court Administrator, George Miller, advising him that she could not handle respondent's comments and treatment any longer. She requested a transfer, even to an entry level job with less pay and prestige, in order to get away from respondent's treatment of her.

9. In mid to late 1991 in the course of her employment, when the respondent said, "Well, if it isn't slut and bitch," Ms. Betty Bailey, Judge Eiesland's clerk, asked "What did you say?" Respondent repeated it. She was stunned and shocked. [Tr. 79] Over the next few weeks, respondent would come by and say to Ms. Lindberg and Ms. Bailey "If it isn't slut and bitch." It appeared to Ms. Bailey that respondent enjoyed referring to the clerks in this manner. Ms. Bailey asked him not to say that word, but he

just laughed it off and the name-calling continued. Respondent used that name for her in front of Judge Eiesland and another clerk, Ms. Patty Pusieski. Of the judges, only respondent used those words. The words were humiliating and demeaning to the recipients.

10. During the course of Ms. Cindy Lindberg's employment as clerk to respondent, on an occasion when respondent saw that she was crying and was very upset and distraught, he asked, "What the hell is wrong with you?" She told him that her dog was missing and she could not find him anywhere. She said, "[P]lease, don't tease me today. You can tease me tomorrow, but please don't tease me today." [Tr. 124] Respondent laughed at her. He told her to go ahead and cry. He told her that her dog was probably dead on the street with his head bashed in and his guts all over the road. [Tr. 124] During the rest of the day, respondent continued to taunt her, saying "Dog dog dog, dead dog, bow wow". [Tr. 124] He also said arf arf arf. During the day Ms. Lindberg cried about the event.

11. One day respondent came out of his office, and walked over to another judge's clerk, who was watching a spider on the wall near her. A different clerk specifically told respondent how afraid the other clerk was of spiders. [Tr. 82] At that point the judge started "teasing" the first clerk about spiders. He knocked the spider towards the clerk. She screamed in fear, telling him not to do that, "Mice, snakes, no, anything but spiders." [Tr. 83]

The judge bent over with laughter. He laughed so hard he was red-faced and his eyes watered. [Tr. 83] Judge Zimmerman came out of his office due to the commotion.

12. In the presence of female court personnel, in or about the Clark County Courthouse, respondent referred to two fellow judges respectively, as "big dick" and "bastard". [Tr. 107] On another occasion, respondent told Ms. Cindy Lindberg that the County Director of Corrections was a "cunt". [Tr. 115]

13. One summer during between 1979 and 1981, following a hearing in which two young women appeared in court wearing shorts and halter-type tops, respondent told a female lawyer in the courtroom that he wanted to see her in chambers. She joined him in chambers at the conclusion of the hearing and respondent said, smiling: "God, those nipples, I just love summertime. [sic] because you can see those nipples when the air conditioning is on." [Tr. 231] Respondent told the female lawyer that "attorneys don't have nipples". [Tr. 232] Attorneys shouldn't show their nipples in his courtroom and that she should always wear a bra.

On a separate occasion, in 1990 or 1991 in the presence of Ms. Lindberg the respondent told the same female lawyer that he thought she was crabby, she needed to get "laid" [Tr. 110] and that he had a single friend she could go out with.

14. In 1984, Ms. Judy Spies applied for the position of confidential secretary to the then-four judge court. Respondent was the only judge who insisted that the secretary use shorthand.

Ms. Spies' shorthand skills were rusty, but she successfully took courses to improve her performance. During her six-month probation period, respondent reminded her daily that she must meet his expectations or she would not be successful in the probationary period. [Tr. 52-3] Without smiling, he would say to her something like: you're fired, you can't take shorthand.

During her employment as court secretary, Ms. Spies did not prepare any official correspondence for respondent, but remembers only private correspondence. [Tr. 54] The ability to take shorthand was important to respondent. He complained that he had to handwrite his personal correspondence because the court clerks could not take shorthand. [Tr. 495] The correspondence included writing to Jolly Mop to inquire about window washing his house [Tr. 54], a letter to the President about a press conference, writing to the airlines so he and his wife could get more credit for better seats. Respondent did not see anything wrong with using court personnel to type personal correspondence.

15. Respondent demeaned his female clerk Ms. Lindberg when he learned that she had been invited by a lawyer to attend a Rotary luncheon, telling her: "You can't go, you have to be a doctor or a lawyer or a judge or a somebody, you can't be a nothing. You have to be a somebody. If they let you go, next they'd have to [let] a goddamn waitress [go]." [Tr. 114]

16. One evening Ms. Cindy Lindberg told respondent that she was leaving. In the presence of another judge, he said "Fine, see

you tomorrow, now go get fucked." [Tr. 111]

17. Ms. Cindy Lindberg was also the object of respondent's obscene gestures with his finger, at times in the presence of other female clerks. After he did it three or four times, she did it back. She did it not as a greeting, but she felt that she had to do it. [Tr. 111-112]

On one occasion, Ms. Betty Bailey saw respondent's gesture. She felt that respondent's behavior was very demeaning, but commonplace for him.

18. On December 22, 1987, in the presence of two other male judges, Judy Spies, the court secretary, delivered mail and while placing it on respondent's desk and was asked by respondent, "What took you so long?" Judge Fritzler stated that Judge Moilanen gets two papers and he didn't get one, and why was this? Judy said to respondent, "don't you share?" meaning the newspapers. [Tr. 58] Respondent extended his arm towards Judy and said "Yeah, have at her." Judy Spies was extremely embarrassed, looked at Judge Fritzler -- who had laughed -- and to respondent, and then left.

Judy Spies then told George Miller, the Court Administrator, about the incident. He said that he would talk to respondent, and that she should write down what happened, which she did. Ms. Spies talked with Judge Fritzler later that day, who apologized for laughing, because he did not realize what was being said. Later that day, respondent talked to her about his remark, telling her that he did not intend his comment to be taken as sexual.

Judy Spies documented the incident and, two days later, discussed it with Ms. Jane Johnson, a County Department executive.

19. One day respondent was missing some witnesses from his courtroom. A clerk began looking for them, including a witness named Scott Teets. Respondent looked inside a courtroom and said to the clerk, pointing to his chest, he didn't see any teats.

20. Respondent used court staff time, equipment and supplies to further his own personal gain. He directed his court clerk, Ms. Lindberg, to get pumpkins for him from a farm during work time. He directed her, while she was in the office, to call for him and determine the latest T-bill rates. These calls took over two hours. He had his clerk call the racetrack and arrange for him and his wife to attend. He had at least one private travel arrangement made for him. His use of court staff for personal correspondence is described earlier. Ms. Lindberg had to work a lot on non-Court business in addition to her regular work, and had to stay late.

Respondent denies using county funds for personal use, but does not deny using the court staff, equipment and supplies for personal use. Rather, he complained about having to handwrite his personal correspondence for typing by court staff because the court staff could not take dictation to his satisfaction.

21. On the private telephone line installed in his office, respondent placed, and admits placing, numerous personal, long distance, telephone calls which were charged to, and paid by, Clark County. The amounts charged, which are understated in the Clark

County telephone billing records, were not reimbursed by respondent.

22. Respondent obtained a new desk when he came to court; it was not standard county-issue. He had other furniture and personal items in his office. Respondent did not use the county-provided janitorial service for cleaning his office. When he cleaned the room himself, he had others bring up the equipment from the first floor. He would have others assist him in lifting up the glass on his desk to clean. Respondent had George Miller, the Court Administrator, occasionally clean his office. Respondent once called court staff while he was in Camas, and directed his office be cleaned.

Cindy Lindberg, his clerk, cleaned respondent's office "a lot". [Tr. 109] Her cleaning involved vacuuming, dusting, cleaning the glass on the desk, and straightening respondent's shoes. [Tr. 109-110] When respondent requested the cleaning, she could not say no. The glass on the desk weighed about 70 pounds, and was difficult for the female clerks to lift and clean. Cleaning offices was not a part of Cindy Lindberg's job description as a clerk. [Tr. 61, 109-10, 203-04, 211-12, 216-18, 222, 307-08]

23. At the hearing, respondent continued to belittle Cindy Lindberg by describing an untidy backdrop curtain at a U.S. presidential press conference as something which "looked like Cindy had put it there." [Tr. 494]

24. One day Ms. Lindberg was very sick, with a cold and a

cough that was so bad she said it felt like a knife blade was between her ribs. She was to be the clerk for respondent that day for a jury trial. She didn't want to be gagging and disrupting the proceedings. She asked another clerk, who serves as backup for the judges' clerks during vacation or sick leave, to substitute for her in court.

She told respondent that she was feeling sick and just wanted to stay at her desk and work until her doctor's appointment, and the other clerk would go in for her. The respondent told her she wasn't that sick and she would go into court.

The trial became a plea bargain. Ms. Lindberg went to the doctor and learned she had bronchitis and pleurisy, and they splinted her ribs for two to three weeks. [Tr. 118-119]

25. During a meeting with people from the Corrections Department, respondent instructed his clerk, Cindy Lindberg, to get a book. When she brought one, he said it was the "wrong goddamned book" or "goddamn, it's the wrong book...". [Tr. 140]

26. Weddings were performed at the District Court Mondays through Fridays after 5 p.m. The weddings would be performed by a judge on a rotating basis following the arraignment schedule. Every five weeks, one of the judges would perform weddings.

Assisting a judge at weddings was not a part of a district court clerk's duties. Clerks, including the judges' clerks, interested in this extra work placed their names on a rotating list. However, respondent did not use the rotating clerks list,

but rather, only had his clerk assist him. So Ms. Lindberg did weddings during arraignment week, the "hell week". When Ms. Lindberg did the weddings it meant not only keeping track of the paperwork, making arrangements during the day, covering her position while making those arrangements, but visiting with the people while they were waiting to be married. There could be as many as 20 weddings in one week.

The judges set the wedding rate at \$25, allocated \$20 for themselves and \$5 for the clerks. There came a time in 1991 when the judges increased the rate to \$40, with the allocation of \$35 to the judges and \$5 to the clerks. Additional clerks decided not to do weddings. At some point there was talk of increasing the clerks' share to \$10. Respondent said to Cindy Lindberg that weddings were not a part of her job, but they would continue and that she would receive \$5.

Some time later, Cindy Lindberg went to respondent and said that she did not want to do weddings anymore. He said to get the hell out of his office. She asked if he was mad. He said, "No, get the hell out of my office, you're out of it." [Tr. 119] Cindy then went to see Judge Fritzler because she was afraid for her job. Judge Fritzler told her that weddings were not within the job duties and that he didn't think that her job would be in jeopardy over it.

Respondent did not speak to Ms. Lindberg the rest of that day. The next morning respondent called her to his office, and told her

to get in here and sit down. He said if he ever heard she said one bad thing about him, she could pack her desk right now and get out of here. And if she didn't pack it, he'd pack up for her. [Tr. 120]

She left the judge's room, grabbed her desk tray and went downstairs. She tried to come back to work, but could not do so until March 1992, when she returned as a civil clerk.

27. In 1986, respondent filed small claims matters, R. D. Moilanen v. Michael and Carol Burton, Small Claims Nos. 203056 and 206046, in the Clark County District Court. Respondent signed the Notice of Claim, as Plaintiff. Respondent did not sign the judgment. Respondent's signature appeared as a judge of the Clark County District Court on the notification of default to defendant because he was the presiding judge at the time and the signature was applied by a rubber stamp. Respondent could have brought the case in superior court, but doing so would have cost more money and involved more paperwork and he was not willing to do so. [Tr. 477-478]

28. Respondent held two debriefing interviews with Ms. Teresa O'Dell, a court secretary. After the Commission's investigator met with Ms. O'Dell while she was under a duty of confidentiality under Commission on Judicial Conduct rules, respondent interrogated her with his attorney, Steven Thayer, listening on the telephone. When Ms. O'Dell reported this event to the investigator, she was later asked by respondent about the nature of the information conveyed to

the investigator.

29. Respondent directed court secretary Ms. Teresa O'Dell to destroy evidence on the court computer which related to his personal correspondence.

30. During the trial, the Court Administrator, a practicing attorney, and the judges' clerks characterized the judge's position in the District Court, and we find as well, that the respondent is a powerful person, the dominant personality in the Clark County District Court. [Tr. 245-246, and 301] To the Court Administrator, he was the "store keeper" and could do what he wanted. [Tr. 205, 301] "His word was law, people let him get his way." [Tr. 80] He set the tone for the Court and its administration.

He considered women clerks at the courthouse to be in two categories for his "jokes": "older, very fine ladies", and others. [Tr. 496] He would not behave to the former category women as he would to the latter. [Tr. 436, 496]

As a judge's clerk observed, and we find as well, a lot of people were afraid of him. [Tr. 75, 77] He could be demeaning and cruel in his treatment of others [Tr. 86, 88], and he could be charming. [Tr. 237] As an attorney who practiced in District Court stated, his behavior to clerical staff, particularly when he was alone with them, might be preceded by a smirk, and then they knew it was coming, that "he was going to sting someone." [Tr. 244] There was a malicious kind of commenting "that was obviously

intended to hurt or embarrass or demean somebody". [Tr. 244] A judge's clerk stated, and we so find, that he enjoyed taunting people. [Tr. 81] There were so many ways people were demeaned, she couldn't remember them all. [Tr. 86] After the courthouse remodel, when the judges' clerks were upstairs, separated from the other clerks who went downstairs, respondent's language increasingly got out of hand. [Tr. 76]

People who had to appear before or work with the judge coped with his behavior by "being a good sport" which seemed to be "the only way to get through this kind of behavior." [Tr. 246] One clerk recounted how she either blocked remembering or laughed at them. "There was nothing else to do." [Tr. 86]

31. We find the respondent's recollection and testimony to be significantly incomplete. Having observed the witness in the hearing room for several hours, we find that respondent was not contrite about his behavior. To the contrary, he asserted that he had not used public funds, even though he used public resources. He showed little awareness of how demeaning and oppressive his behavior was. The only reason he would not use vulgar language in the future was because of this investigation. He blamed others for the problems discovered by this investigation.

32. Any Conclusion deemed to be of a Finding of Fact is hereby adopted as such. From these Findings we reach these Conclusions:

CONCLUSIONS

1. The Code of Judicial Conduct (CJC) provides 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 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 3

**Judges Should Perform the Duties of Their Office
Impartially and Diligently**

The judicial duties of a judge take precedence over all other activities. The judge's judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

. . . .

(B) Administrative Responsibilities.

(1) Judges should diligently discharge their administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

2. The rules for confidentiality of the Commission's

investigation are established by Wa. Const. Art. 4, Section 31, and further by RCW 2.64.113. The relevant rule for confidentiality is located in WAC 292-08-050(1) which provides:

Except as provided in this rule and WAC 292-12-030 and 292-12-040, the fact that a complaint has been made, or a statement has been given to the commission and all papers and matters submitted to the commission together with the investigation and initial proceedings conducted pursuant to these rules, shall be confidential. However, the person filing a complaint or giving a statement to the commission is not prohibited by these rules from informing any third party, or the public generally, of the factual basis upon which a complaint is based, or a statement is given.

3. Respondent's conduct described in Finding Nos. 4, 8, 9, 14, 17, 18, 19, 20, 21, 22, 23, and 26 constituted multiple violations of Canons 1, 2(A) and 3(B)1 of the Code of Judicial Conduct.

4. Respondent's conduct described in Finding Nos. 7, 10 and 11 constituted multiple violations of Canons 1 and 3(B)(1) of the Code of Judicial Conduct.

5. Respondent's conduct described in Finding Nos. 27, 28, and 29 constituted violations of Canons 1 and 2(A) of the Code of Judicial Conduct.

6. We acknowledge that additional facts were brought forth during the hearing that were not specifically encompassed by the Statement of Charges. Respondent did not object to this evidence and had full opportunity for cross-examination. Nonetheless, because they are not within the Statement of Charges, we decline in

this Decision to conclude the acts were violations, e.g. Findings 13, 15 and 25.

7. Allegations that were set forth in the Statement of Charges that proceeded to fact-finding hearing, which are not set forth in the Conclusions above, were not found to be violations of the Canons, or were not found to exist by clear, cogent and convincing evidence, or were summaries of previous facts found to be violations.

8. Factors Affecting the Recommendation for Discipline.

The Washington State Supreme Court has listed 10 factors to consider when determining the appropriate sanction for violations of the Code of Judicial Conduct. These are not exclusive factors. They are:

(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.

See also, Gruber, "The Sexual Harassment Experience of Women in Nontraditional Jobs", Sex and Power in the Workplace, 1992, at

129-136, listing two other factors when there is harassment, in particular, which determine the severity of the impact on the recipients:

- a. the source of the harassment and the differences of power;
- b. the directness of the harassment, i.e. whether it is directed to a particular person as opposed to generic women.

In re Deming, 108 Wn.2d 82, 119-120 (1987).

9. This judge has served in the District Court of Clark County for 14 years. He sets the tone for the court and its administration. He has his way. He intimidates, and is feared by many. Respondent judge's misconduct is not an isolated event, but is clearly a pattern of conduct that has occurred over a period of several years.

This is a judge who, in the courthouse during work days, repeatedly demeaned and degraded subordinate court personnel, primarily clerks. In the presence of others, he called them "slut" and "bitch". He greeted them in the morning with "Well, if it isn't slut and bitch"; "get me a cup of coffee, slut"; "it's time for court, slut." Even when asked to stop, he continued. In the presence of his clerk, he demeaned a Clark County woman executive, calling her a "cunt". In the presence of another judge, he told his clerk to "get fucked". He repeatedly gave his clerk "the finger" as a "greeting". In the presence of clerks, he referred to other judges as "bastard" and "big dick". The judge obviously

enjoyed making these comments, sometimes preceding his stinging remarks with a smirk.

The judge demonstrated a particularly cruel "sense of humor". He deliberately toyed with a clerk's fears, causing her to go into hysterics. He found this to be so amusing, he doubled over with laughter. Throughout one day he repeatedly and consciously taunted his own clerk, who was distraught about a personal problem.

At best, during the hearing, the judge had only a vague recollection of these events, acknowledging the conduct only as a result of the investigation. The judge is not contrite. He persisted in finding these remarks defensible, apparently contending the atmosphere in the courthouse made his conduct acceptable, or others caused him to do it.

Any reasonable person would find such behavior by a judge to be patently offensive. The judge, through his substantial power, made these harassing remarks a condition of employment, creating a hostile work environment in the Clark County Courthouse. There is a vast power differential between the judge and his clerks. Respondent judge persisted in describing the relationship as one of equals, "friends", and suggested his conduct could be excused as mere "jokes". The judge fails to recognize the master-servant relationship that exists. The clerks come to work, not to socialize, and those most affected became afraid of respondent in recent years. It is disingenuous for respondent judge to blame the clerks for his conduct, or to suggest they made him do it. The

jokes and teasing experienced by the judge in no way justify his conduct.

This is not private conduct, but conduct done in the Clark County Courthouse, during the workday, in the presence of others.

Over the years the judge has also used his position for personal gain. He directed staff to clean his office, though it is not within their job description. Unlike the other judges, he required his clerk to work on weddings, both during the workday and after hours. She was required to prepare for them during the "awful" "hell week" of arraignments. He had a personal financial gain from this. He directed staff to check on T-bill investment rates, to type his private letters, to leave work and buy pumpkins, and to arrange reservations for him and his wife at a racetrack. He used the court telephone to make private phone calls, and has not reimbursed the county for them.

The respondent judge has also attempted to destroy documents that were relevant to the Commission's investigation. He questioned subordinate court staff about her confidential interview with the Commission's investigator. Here again he has demonstrated little contrition, attempting to excuse his behavior.

His testimony during the hearing shows only a limited awareness of misconduct, and little desire to change. In the courthouse, the public has the right to expect a judge to treat staff and others with respect. The public also has the right to expect a judge not to use public resources for his private gain.

The public has a right to expect a judge not to file cases in his own court, especially when another venue exists.

10. Judge Moilanen's conduct has violated Canons 1, 2(A) and 3(B)(1) of the Code of Judicial Conduct, and WAC 292-08-050. The judge's conduct has materially and substantially adversely affected the integrity of and respect for the judiciary.

11. Censure with a Recommendation for Removal is necessary to restore the public's confidence in the judiciary. Anything less, such as censure with a suspension, will not remedy the harm done over these years. Respondent judge has demonstrated that he does not have the temperament, personal integrity or commitment necessary for a judge in the State of Washington.

12. Any Finding of Fact deemed to be a Conclusion is hereby adopted as such.

ORDER OF CENSURE

Based on the foregoing Findings of Fact and Conclusions, the Commission determines that respondent violated Canons 1, 2(A), and 3(B)(1) of the Code of Judicial Conduct and WAC 292-08-050, and hereby CENSURES respondent.

RECOMMENDATION

Utilizing the criteria stated in Conclusion No. 8, Findings of Fact and Conclusions, it is the opinion of the Commission on Judicial Conduct that respondent has demonstrated an absence of those personal and professional qualities which are necessary to hold judicial office in the State of Washington.

Therefore, the Commission recommends to the Supreme Court that the Honorable Robert D. Moilanen be removed from office.

DATED this 5th day of February, 1993.

COMMISSION ON JUDICIAL CONDUCT

Dale Brighton
Dale Brighton

Nancyhelen Hunter Fischer
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Todd Whitrock
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Therefore, the Commission recommends to the Supreme Court that the Honorable Robert D. Moilanen be removed from office.

DATED this 5th day of February, 1993.

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