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FEB 5 1993

COMMISSION ON
JUDICIAL CONDUCT

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
)	
_____)	

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, 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. Ms. Cindy Lindberg began working at the Clark County District Court in January, 1988. In October, 1988, respondent called Cindy Lindberg to his office for an interview for the job of 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? She answered and was hired or assigned to the job.

As respondent's clerk, Ms. Lindberg prepared his dockets, scheduled motions, scheduled trials, prepared paperwork for court, prepared paper in court, and disbursed papers to attorneys and agencies. It was a busy, heavy docket.

During their association, respondent and Ms. Lindberg discussed some personal matters. Joking was initiated by either of them. She followed his rules, and he set the tone. During her employment as a judge's clerk, Ms. Lindberg felt intimidated by respondent.

5. Respondent's clerk, Ms. Cindy 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. Respondent, when annoyed with what he apparently considered to be a clutter on her desk, on several occasions removed the files from her desk, depositing them under her desk and in garbage cans and/or drawers. As a result of respondent's conduct, it was necessary for Ms. Lindberg to recollect and reorganize her files on her desk before she could proceed with her regular work. 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.

6. During the mid to late part of 1991, respondent began to call his clerk, Ms. Cindy Lindberg, a "slut" at numerous times in the presence of her co-workers, while at work. Respondent, in the presence or hearing of others, in the courthouse, used the word "slut" in place of Ms. Cindy Lindberg's name when addressing her in the course of employment with phrases such as "Get me a cup of coffee, slut"; "Well, there's Betty Bitch and Cindy Slut"; "It's time for court, slut"; "Grab the files, slut". While Ms. Cindy Lindberg never directly challenged the respondent on his name calling, she 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, in order to get away from the respondent's treatment of her.

7. 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 Eisland's clerk, asked "What did you say?" Respondent repeated it. She was stunned and shocked. Over the next few weeks, respondent would come by and say "If it isn't slut and bitch." And 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 Eisland and another clerk, Ms. Patty Pusieski. Of the judges, only respondent used those words. The words were humiliating and demeaning to the recipient.

8. During the course of Ms. Cindy Lindberg's employment as clerk to respondent, on an occasion when respondent discovered that she was visibly upset and somewhat distraught over the possible loss of her dog, respondent purposely taunted her to the point of tears, portraying a gruesome scene of discovering a beloved pet dead in the street. Throughout the remainder of the day, the respondent continued to taunt Ms. Lindberg, saying such things as "Doggie doggie doggie", or "Bow wow wow", or "Arf arf arf", each of which had the effect of reducing Ms. Lindberg to tears.

9. Ms. Betty Bailey was the object of taunting behavior in

the court offices by respondent. After learning about her fear of spiders, respondent teased Ms. Bailey with a spider until she became hysterical. She plead in vain for him to stop.

10. 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". On another occasion, respondent told Ms. Cindy Lindberg that a female employee of another department was a "cunt".

11. One summer 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, where she joined him at the conclusion of the hearing and was told by the respondent: "God, those nipples. I just love summertime, because you can see those nipples when the air conditioning is on." The respondent went on to advise the female lawyer that lawyers should not show their nipples and he did not want to see her nipples and directed her that she should always wear a bra. On a separate occasion in 1990 or 1991, the respondent told the same female lawyer that he thought she was crabby, should "get laid" and that he had a single friend she could go out with.

12. Respondent demeaned his female clerk 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 [l]et a goddamn waitress [go]."

13. One evening Ms. Cindy Lindberg told respondent that she was leaving. He said "Fine. See you tomorrow. Now go get fucked."

14. 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.

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

15. In 1986, respondent filed small claims matters, R. D. Moilanen v. Michael and Carol Burton, Small Claim 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 another court.

16. Respondent used court staff time, equipment, and/or supplies to further his own personal gains: to get a pumpkin from a farm one Halloween; to do his personal correspondence; to conduct

a search to learn the latest T-bill rates on one occasion; to arrange for him and his relatives to attend the races on one occasion; and to attend to his personal travel on at least one occasion.

Respondent denies using county funds for personal use, but does not deny using the court staff, equipment and supplies for personal use.

17. On the individual county 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.

18. 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.

19. Respondent attempted to interfere with the Commission's investigation in this matter by directing court secretary Ms. Teresa O'Dell to destroy evidence on the court computer which related to his personal correspondence.

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 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. The conduct described in Finding No. 4 constituted a violation of Canons 1, 2(A) and 3(B)1 of the CJC and RCW 49.60.180.

4. The conduct described in Finding Nos. 6, 7, 13, 14, and 17 constituted a violation of Canons 1, 2(A) and 3(B)1 of the CJC.

5. The conduct described in Finding Nos. 5, 8, 9, and 16 constituted a violation of Canons 1 and 3(B)(1) of the CJC.

6. The conduct described in Finding Nos. 10, 11, 12, and 15 constituted a violation of Canons 1 and 2(A) of the CJC.

7. The conduct described in Finding Nos. 18 and 19 constituted a violation of Canons 1 and 2(A) of the CJC, and a violation of WAC 292-08-050.

8. Allegations set forth in the Statement of Charges that proceeded to fact-finding hearing, which were not set forth in the Findings above, were not substantiated by clear, cogent and convincing evidence, or were not shown to violate any Canon of the CJC.

9. 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.

10. The Commission concludes:

(a) Respondent's misconduct is not isolated but clearly part of a pattern of conduct.

(b) Respondent's misconduct was demeaning to court personnel, primarily female and primarily working in subordinate positions to respondent and, at times, was clearly cruel.

(c) Respondent's misconduct occurred outside the courtroom but always in and about the courthouse during the work day.

(d) Respondent's misconduct occurred in his official capacity as opposed to his private life.

(e) While respondent now acknowledges some of his misconduct, it appears that his acknowledgment came only as a result of these proceedings.

(f) There is no evidence to date that respondent has made any effort to change or modify his conduct, however, his testimony during the hearing of this matter indicates a limited awareness and desire to change. Respondent did not appear contrite before the Commission.

(g) Respondent has served in his capacity as District Court Judge for Clark County for 14 years.

(h) There have been prior complaints against respondent, none of which resulted in a finding of probable cause to believe the respondent had violated the canons of the Code of Judicial Conduct.

(i) There has been a substantial and materially adverse effect on the integrity of and respect for the judiciary: court personnel are aware of respondent's misuse for personal benefit of county-provided property, equipment and personnel; court personnel and others are aware of respondent's demeaning and derogatory comments and treatment of others, showing little or no respect for their feelings; court personnel and others are aware of the respondent's derogatory and demeaning comments and treatment of females and subordinate staff; and court personnel are aware of the disrespect respondent has shown for another county official and other judges.

(j) Respondent exploited his position to satisfy his personal desires; requiring court personnel to conduct his personal private business and run personal private errands for him.

11. Judge Moilanen's conduct violated Canons 1, 2(A), and

3(B)1 of the Code of Judicial Conduct and WAC 292-08-050, detrimentally affected the integrity of the judiciary, and undermined public confidence in the administration of justice.

12. The appropriate sanction for respondent's misconduct is Censure with a thirty day suspension.

13. Any Conclusion which should be deemed a Finding of Fact 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 CJC and WAC 292-08-050, and hereby CENSURES 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 in and about the courthouse, whether or not such comments are intended by him as jokes;
2. Take no retaliation, directly or indirectly, against witnesses or other persons who cooperated with the Commission in its investigation and proceeding;
3. Attend, participate and complete courses selected by the Commission concerning judicial conduct pertinent to behavior exhibited by respondent at the National Judicial College within one year of this decision;
4. The Commission shall monitor compliance with order, and Judge Moilanen shall cooperate with such monitoring.
5. Respondent shall publish an individual, personal apology to each of the following persons forthwith: Ms. Cindy Lindberg, Ms. Betty Bailey, Ms. Judy Spies and Ms. Jan Anderson. Additionally, respondent shall publicly and orally deliver such apology to each of such persons.
6. Respondent shall forthwith cause an accounting, at his own expense, of the value of Court resources (staff time, equipment use, supplies, etc.) appropriated by him for

his personal use. Respondent shall tender the amount to the Clark County Commissioners at a regular public meeting.

7. Within 60 days following respondent's completion of the courses required by paragraph 3 above, respondent shall develop and propose rules to the other judges of the Clark County District Court which shall include rules to improve the working environment and a meaningful method for complaints to be dealt with, and for true accountability.

DATED this _____ day of _____, 1993.

COMMISSION ON JUDICIAL CONDUCT

(see attached opinion)
Hon. Donald H. Thompson, Presiding

(see attached opinion)
Dale Brighton

(see attached opinion)
Hon. Gerry Alexander

Harold Clarke, III

(see attached opinion)
G. Douglas Ferguson

(see attached opinion)
Nancyhelen Hunter Fischer

Hon. Thomas E. Kelly

(see attached opinion)
Anthony Thein

(see attached opinion)
Todd K. Whitrock

(see attached opinion)
Pamela T. Praeger

RECOMMENDATION

Utilizing the criteria stated in Conclusion No. 9, the Commission's Findings of Fact and Conclusions and it's opinion that respondent's conduct violates the Code of Judicial Conduct, seriously impairs the integrity of the judiciary, and substantially undermines the public confidence in the administration of justice to such a degree that the respondent should be relieved of the duties of his office for a specified period of time, the Commission recommends to the Supreme Court that the Honorable Robert D. Moilanen be suspended from office for not less than thirty (30) calendar days.

DATED this 5th day of February, 1993.

COMMISSION ON JUDICIAL CONDUCT

(see attached opinion)
Hon. Donald H. Thompson, Presiding

(see attached opinion)
G. Douglas Ferguson

(see attached opinion)
Anthony Thein

(see attached opinion)
Nancyhelen Hunter Fischer

(see attached opinion)
Todd K. Whitrock

T. E. Kelly
Honorable Thomas E. Kelly

Harold Clarke III
Harold Clarke, III

(see attached opinion)
Honorable Gerry Alexander

(see attached opinion)
Dale Brighton

(see attached opinion)
Pamela T. Praeger