

FILED
SEP 22 1992

COMMISSION ON

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In Re the Matter of:)
) NO. 91-1182-ATT-92-42
HONORABLE ROBERT D. MOILANEN,)
Judge, Clark County District) ANSWER TO AMENDED
Court) STATEMENT OF CHARGES
)
)
_____)

COMES NOW, the Honorable Robert D. Moilanen, by and through his attorneys, Steven W. Thayer and Kurt M. Bulmer, and Answers the Amended Statement of Charges filed September 14, 1992, by the Commission on Judicial Conduct against him, as follows:

ADMISSIONS AND DENIALS

1. Paragraphs 1, 2 and 3 of Part I, Background, are admitted.

2. Paragraphs 1 through 7, including all sub-parts of those paragraphs, of Part II, Facts Supporting Charges, are generally denied because they incorporate assertions of legal conclusions rather than factual allegations, because they assert insufficient facts and details to permit Respondent to fairly determine the factual charges against him and because Respondent has the right to require the State to prove the allegations against him. By generally denying these allegations Respondent puts the State to its proof as to each and every factual

allegation made in its Amended Statement of Charges and to each and every element of the sections of the Code of Judicial Conduct, RCW, WAC and the Washington State Constitution he is alleged to have breached. Respondent puts the State to its proof under the clear, cogent and convincing standard adopted by the Commission under WAC 292-12-110 (4).

3. Respondent specifically:

a. Denies that he has exhibited inappropriate demeanor when working with court personnel outside the court setting.

b. Denies that he has exhibited inappropriate demeanor when working with female court personnel by exposing them to incidents of sexual harassment.

c. Denies that he has abused the power of his office and exhibited demeaning behavior towards court personnel.

e. Denies that he has abused the power of his office in discharging administrative responsibilities.

f. Denies that he has misused public funds.

g. Denies that he has taken direct action to interfere with the Commission on Judicial Conduct's investigation.

h. Denies that he engaged in ticket fixing by using the authority and influence of his office to influence a public official to reduce a criminal traffic charge to an infraction.

4. Part III, Basis for Commission Action, is neither admitted nor denied since Respondent lacks sufficient information to form a belief as to whether the Commission has

determined that probable cause exists for believing Respondent has violated the listed CJC, RCW, WAC and State Constitution provisions. Respondent denies that sufficient probable cause exists for such a determination to have been made.

5. Part IV, Notification of Right to File a Written Answer, is a citation of procedural matters and is not subject to admission or denial.

JURISDICTION AND OTHER DEFENSES

By way of further response Respondent asserts:

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

7. As to all matters that involve personnel matters between the Respondent and his staff that are related to the employer/employee relationship and are not part of the Respondent's judicial functions, these are outside the scope of the Commission's authority for sanctioning and have been pre-empted by state and federal laws.

8. As to all factual allegations, Respondent has not been provided with sufficient details prior to the filing of the Amended Statement of Charges nor as part of the Amended Statement of Charges to respond to the allegations. Until such time as sufficient detail is provided Respondent reserves his right to amend his answer and to raise additional defenses. Such defenses include but are not limited to freedom of speech, freedom of assembly, freedom to express political opinion, the supremacy clause, due process, equal protection, vagueness, lack

of jurisdiction, laches, pre-emption, double jeopardy, collateral estoppel, res judicata, separation of powers and judicial independence.

9. As to allegations that Respondent has violated the provisions of RCW 2.64.113, WAC 292-08-050, and Article IV, Section 31 of the Washington State Constitution, the Commission is without authority to enforce or sanction for violations of such provisions as the Commission is restricted by the Article IV, Section 31, of the Washington State Constitution to sanctions solely for violations of rules of judicial conduct.

10. As to allegations that Respondent has violated WAC 292-08-050 and Article IV, Section 31 of the Washington State Constitution, the Commission is without authority to proceed on these sections since they are simply grants of administrative authority and/or are without penalty provisions and/or concern confidentiality provisions that have been waived by the Respondent

11. As to allegations as to personnel matters relating to hiring and firing and granting of sick leave, Respondent denies that he has authority over such matters and asserts that these are matters controlled by county and state rules, procedures, policies and laws.

12. As to allegations that Respondent filed a matter in his own court, such allegation is denied since the filing was in the jurisdiction of the District Court but was not heard or determined by the Respondent and was filed in the jurisdiction of the District Court by necessity.

13. By way of general defense Respondent defends on the basis that most of the allegations involved in this matter appear to be connected with a single disgruntled and unhappy county employee who is attempting to use the Commission to further her goal of extracting monetary compensation from Respondent. As a matter of public policy the Commission should decline to be involved in single employee personnel matters where the employee is using the Commission to coerce the Respondent into a settlement and where there are adequate civil remedies available to the employee.

REQUEST FOR DISMISSAL

14. Respondent denies that he has acted improperly and asks that all allegations against him be dismissed.

DATED this 21ST day of September, 1992.


Kurt M. Bulmer
Attorney for Respondent Judge
WSBA # 5559

201 Westlake Ave. N.
Seattle, WA 98109
(206) 343-5700