

ORIGINAL

FILED
MAY 5 1992

COMMISSION ON
JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

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In Re the Matter of:)	
)	NO. 91-1182-F-29
HONORABLE ROBERT D. MOILANEN,)	
Judge, Clark County District)	ANSWER TO STATEMENT
Court)	OF CHARGES
)	
_____)	

COMES NOW, the Honorable Robert D. Moilanen, by and through his attorneys, Steven W. Thayer and Kurt M. Bulmer, and Answers the Statement of Charges dated April 14, 1992, filed 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 8, 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



1 allegation made in its Statement of Charges and to each and
2 every element of the sections of the Code of Judicial Conduct,
3 RCW, WAC and the Washington State Constitution he is alleged to
4 have breached. Respondent puts the State to its proof under the
5 clear, cogent and convincing standard adopted by the Commission
6 under WAC 292-12-110 (4).
7

8 3. Respondent specifically:

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

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

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

17 e. Denies that he has exhibited inappropriate
18 demeanor in the courtroom.

19 f. Denies that he has abused the power of his
20 office in discharging administrative responsibilities.

21 g. Denies that he has misused public funds.

22 h. Denies that he has taken direct action to
23 interfere with the Commission on Judicial Conduct's
24 investigation.

25 i. Denies that he has used listening devices in his
26 phone to eavesdrop on the office of others.

27 4. Part III, Basis for Commission Action, is neither
28 admitted nor denied since Respondent lacks sufficient

1 information to form a belief as to whether the Commission has
2 determined that probable cause exists for believing Respondent
3 has violated the listed CJC, RCW, WAC and State Constitution
4 provisions. Respondent denies that sufficient probable cause
5 exists for such a determination to have been made.

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

9 JURISDICTION AND OTHER DEFENSES

10 By way of further response Respondent asserts:

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

15 7. As to all matters involving legal determinations as to
16 the interpretation of statutes, case law or courts rules as they
17 relate to judicial determinations made in Respondent's official
18 capacity as District Court Judge, the Commission is without
19 authority to review such matters and may not impose its
20 judgement as to decisions made by Respondent on matters of law.

21 8. As to all matters involving legal determinations as to
22 how to impose sentences or what sentences to impose, where such
23 sentences are within the legal discretion of the judge, the
24 Commission may not impose sanctions since such sanctions chill
25 the rights of criminal defendants to receive a determination
26 from a judge who is free from worry that his or her lawful
27 decisions will subject him or her to discipline proceedings.

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

8 10. As to all factual allegations, Respondent has not been
9 provided with sufficient details prior to the filing of the
10 Statement of Charges nor as part of the Statement of Charges to
11 respond to the allegations. Until such time as sufficient
12 detail is provided Respondent reserves his right to amend his
13 answer and to raise additional defenses. Such defenses include
14 but are not limited to freedom of speech, freedom of assembly,
15 freedom to express political opinion, the supremacy clause, due
16 process, equal protection, vagueness, lack of jurisdiction,
17 laches, pre-emption, double jeopardy, collateral estoppel, res
18 judicata, separation of powers and judicial independence.

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

26 12. As to allegations that Respondent has violated WAC 292-
27 08-050 and Article IV, Section 31 of the Washington State
28 Constitution, the Commission is without authority to proceed on

1 these sections since they are simply grants of administrative
2 authority and/or are without penalty provisions and/or concern
3 confidentiality provisions that have been waived by the
4 Respondent

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

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

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

25 X

26 X

27 X

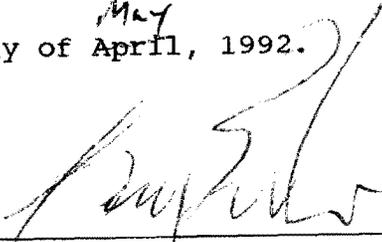
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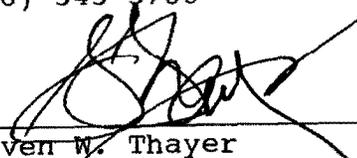
REQUEST FOR DISMISSAL

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

DATED this 1st ^{May} day of April, 1992.


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