

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED
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COMMISSION ON
JUDICIAL CONDUCT

1 In Re the Matter of:)
2)
3 The Hon. A'lan Hutchinson) CJC No. 93-1652-F-47
4 Pierce County District Court No. 3)
5 201 Center Street S.) COMMISSION DECISION
6 P.O. Box 105)
7 Eatonville, WA 98328-0105)
8 _____)

9 A Fact Finding hearing was held pursuant to Commission on
10 Judicial Conduct rules as ordered by the Commission on Judicial
11 Conduct ("Commission") on November 4, 1994 in Tacoma. Members of
12 the Commission present were G. Douglas Ferguson (presiding), Judge
13 Stephen M. Brown, Ruth Schroeder, Nancyhelen Hunter Fischer, K.
14 Collins Sprague, Vivian Caver, Pamela T. Praeger, Margo Keller,
15 Judge H. Joseph Coleman, Judge Susan Dubuisson, and Dale Brighton.

16 Respondent Judge A'lan Hutchinson appeared in person and by
17 his attorney, John J. O'Connell. The Commission was represented by
18 its attorneys, David D. Hoff and Kathleen J. Hopkins.

19 Witnesses were sworn and heard; exhibits were admitted;
20 parties gave arguments.

21 Having heard and considered the evidence, and having
22 considered the arguments of the parties, the Commission finds by
23 clear, cogent and convincing evidence the following:

FINDINGS OF FACT

24 1. The Honorable A'lan Hutchinson (Respondent herein), is
25 now and was at all times discussed herein a part-time District
26 Court Judge of Pierce County District Court No. Three in
27

1 Eatonville, Washington. Respondent has served in this capacity for
2 thirteen years.

3 2. On August 10, 1993, Respondent conducted a hearing in
4 Cause No. 824-93, Petition for Name Change Submitted by Dominic
5 Scellato, a.k.a. Gina D'Shirico, and Cause No. 825-93, Petition for
6 Name Change Submitted by David C. Pryor, a.k.a. Cathy Matthews.
7 The reason for the petition was that petitioners were going through
8 reassignment therapy. See Transcript, page 35. Respondent
9 declined to grant the petitions until gender reassignment surgery
10 was completed. See Exhibit No. 3, pages 1-2.

11 3. On October 26, 1993, Respondent presided over a Motion
12 for Reconsideration in the same matters. The record of the
13 proceeding shows that Respondent initiated an ex parte, independent
14 factual investigation about gender reassignment surgery. His ex
15 parte contacts, made without prior or contemporaneous notice to the
16 petitioners, included the "Washington State Medical Society in
17 Seattle," the "Washington State Surgery Department," the "American
18 Medical Society in Chicago," and the Washington "Department of
19 Health," "Board of Medical Examiners." Exhibit No. 2, pages 3-4.

20 4. During the hearing in a crowded courtroom, Respondent
21 reported the results of his investigation. He stated that
22 according to the "American Medical Society," gender reassignment
23 surgery is probably illegal in most states as "maiming."
24 Respondent stated that such surgery is not offered in Washington,
25 and that "there is some question in my mind whether or not a
26 physician performing this surgery in the State of Washington might
27 not be guilty of a felony." Respondent also stated that after

1 surgery, "to maintain the level of Estrogen in the body to secure
2 the desirable results, whatever those are, is so high that as to
3 almost be toxic and to be a danger to the patient.... Plus the
4 fact that it is considered that 40% of these surgeries, that is to
5 say for the removal of the parties penis and testicles, etc., at
6 40% of these surgical procedures are considered failures. And that
7 the court should do nothing at all to encourage this procedure
8 because of that high statistical failure." Exhibit No. 2, pages 3-
9 4. Expert medical testimony presented at the fact-finding
10 hearing, that was not rebutted, clearly established that
11 Respondent's conclusions from his ex parte, independent
12 investigations were incorrect or, at best, disputed by
13 knowledgeable experts.

14 5. Before a crowded courtroom, Respondent made disparaging
15 remarks about the petitioners and the reasons for each seeking an
16 official change of name. Respondent's remarks suggested that
17 petitioners, if allowed to change their names, would pose a risk to
18 those who "send their daughters into the ladies' restroom."
19 Exhibit No. 2, page 5. Respondent stated: "Although I personally
20 feel that this whole procedure is immoral. It evidences a mentally
21 ill and diseased mind. I am grateful [sic] that the physicians of
22 this state and the rest of the United States apparently have the
23 attitude that this surgical amputation is something beyond the
24 medical pale" Exhibit No. 2, page 6. See also Exhibit No. 3,
25 pages 2-3.

26 6. On March 2, 1994, Respondent was sent a letter from the
27 Commission informing him that a verified statement was filed in
28 **COMMISSION DECISION - Page 3**

1 accordance with WAC 292-12-010(4) and the Commission was pursuing
2 initial proceedings. Enclosed with the letter was a copy of the
3 Statement of Allegations. Respondent replied by letter dated April
4 26, 1994. See Exhibit No. 3. Respondent's reply was sarcastic and
5 disrespectful, and evidenced a continuing lack of insight.¹

6 7. Any Conclusion which should be deemed a Finding of Fact
7 is hereby adopted as such.

8 CONCLUSIONS

9 1. On October 26, 1993, Respondent volunteered ex parte
10 communications initiated and considered by him on matters pending
11 before him. To the extent that these communications related to
12 opinions on the law, in addition to factual information, Respondent
13 did not receive such communications on the law through amicus
14

15 ¹ Respondent described the proceeding:

16
17 On August the 10th, last year, I donned my robe and took the bench to be
18 greeted by two individuals, David Pryor and a Dominic Scellato, representing
19 themselves, pro se. Dominic was dressed in jeans and a daring low cut blouse, and
20 David was outfitted in high heels, a flowing dress, and was clutching a little purse in
21 his hand. They were really quite charming, the only mar on the scenario, being the
22 fact that they hadn't fully shaved that morning.

23 They informed me that they wanted me to change their names. David
24 wanted to be called Kathleen Gayle, and Dominic wanted to be called Gena Grace,
25 and they wanted me to sign this change of name right now; the reason being, that
26 they were going to "some day" have their privates amputated. They offered no
27 testimony on this subject; produced no medical reports, and did not offer to be
28 sworn. Upon asking them when this amputation was going to take place, they were
29 very hesitant and, after concurring, said "about a year". David did most of the talking
30 in an artificial and high falsetto. It did not take me long to come to a decision.

31 I informed them that I would not change their names until after the surgery
32 had been effectuated and that they should come back in a year when it had been
33 accomplished, and then I would change their names. There was no discussion
34 concerning my reasons at that time. Upon my denying their request for an immediate
35 name change, they stood up and flounced out of court. David thereupon wrote a
36 letter of complaint to the "Eatonville Dispatch".

37 Exhibit No. 3, pages 1-2.

1 | briefs. Respondent violated Canons 1, 2(A) and 3(A)(4) of the Code
2 | of Judicial Conduct.²

3 | _____
4 | ² The Code of Judicial Conduct provides in part:

5 | **CANON 1**

6 | **Judges Should Uphold the Integrity and
7 | Independence of the Judiciary**

8 | An independent and honorable judiciary is indispensable to justice in our society.
9 | Judges should participate in establishing, maintaining, and enforcing, and should themselves
10 | observe high standards of conduct so that the integrity and independence of the judiciary may
11 | be preserved. The provisions of this code should be construed and applied to further that
12 | objective.

13 | **CANON 2**

14 | **Judges Should Avoid Impropriety and the Appearance
15 | of Impropriety in All Their Activities**

16 | (A) Judges should respect and comply with the law and should conduct
17 | themselves at all times in a manner that promotes public confidence in the integrity and
18 | impartiality of the judiciary.

19 | **CANON 3**

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

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

25 | (A) Adjudicative Responsibilities.

26 | (3) Judges should be patient, dignified, and courteous to litigants,
27 | jurors, witnesses, lawyers, and others with whom judges deal in their official
28 | capacity, and should require similar conduct of lawyers, and of the staff,
29 | court officials, and others subject to their direction and control.

30 | (4) Judges should accord to every person who is legally
31 | interested in a proceeding, or that person's lawyer, full right to be
32 | heard according to law, and, except as authorized by law, neither
33 | initiate nor consider ex parte or other communications concerning
34 | a pending or impending proceeding. Judges, however, may obtain
35 | the advice of a disinterested expert on the law applicable to a
36 | proceeding before them, by amicus curiae only, if they afford the
37 | parties reasonable opportunity to respond.

38 |

1 any, to arrive at an appropriate discipline in cases involving
2 violations of the Code of Judicial Conduct. To guide the
3 Commission's identification and interpretation of mitigating and
4 aggravating circumstances, the Commission relied upon criteria set
5 forth by the Washington State Supreme Court in In re Deming, 108
6 Wn.2d 82 (1987):

7 To determine the appropriate sanction, we
8 consider the following nonexclusive factors:
9 (a) whether the misconduct is an isolated
10 instance or evidence a pattern of conduct; (b)
11 the nature, extent and frequency of occurrence
12 of the acts of misconduct; (c) whether the
13 misconduct occurred in or out of the
14 courtroom; (d) whether the misconduct occurred
15 in the judge's official capacity or in his
16 private life; (e) whether the judge has
17 acknowledged or recognized that the acts
18 occurred; (f) whether the judge has evidenced
19 an effort to change or modify his conduct; (g)
20 the length of service on the bench; (h)
21 whether there have been prior complaints about
22 this judge; (i) the effect the misconduct has
23 upon the integrity of and respect for the
24 judiciary; and (j) the extent to which the
25 judge exploited his position to satisfy his
26 personal desires.

27 In re Deming at pages 119-120.

28 6. The Commission concludes:

(a) Isolated Instances or Pattern of Misconduct.

Respondent's misconduct was an isolated event.

(b) Nature, Extent and Frequency of Misconduct. Respondent's
moral pronouncements and demeaning statements directed to
petitioners deprived them of an impartial and unbiased forum.
Respondent's ex parte investigation resulted in his reaching a
conclusion before he gave the petitioners a right to respond and be
heard. Respondent's testimony at the hearing suggested that he

1 would do the same thing if he were faced with similar circumstances
2 in the future.

3 (c) Misconduct Manifested in the Courtroom. Respondent's
4 misconduct occurred in the courtroom.

5 (d) Misconduct in Official Capacity or Private Life.
6 Respondent's misconduct occurred in his official capacity.

7 (e) Acknowledgement of Misconduct. Respondent acknowledged
8 his behavior, but did not believe that it constituted a violation
9 of the Canons.

10 (f) Effort to Change or Modify Behavior. Respondent
11 testified that he would modify his behavior if the Commission
12 ordered it.

13 (g) Length of Service on the Bench. Respondent has served in
14 his judicial capacity for thirteen years.

15 (h) Prior Complaints. There have been no complaints
16 concerning Respondent resulting in public statement of charges by
17 the Commission.

18 (i) Effect of Misconduct on Judiciary. Respondent's
19 treatment of petitioners undermines the public's expectation that
20 judges will act impartially and will treat each citizen appearing
21 in a court with the respect, dignity, and courtesy the Code
22 requires.

23 (j) Extent of Exploitation of Position. Respondent used his
24 judicial position to impose his personal moral views upon others.

25 7. The Findings show that Respondent has engaged in
26 misconduct that is detrimental in light of the high standards of
27 behavior expected from a judge. We conclude that his conduct

1 | violated the Code of Judicial Conduct, detrimentally affects the
2 | integrity of the judiciary, and undermines public confidence in the
3 | administration of justice. The nature of Respondent's violations,
4 | after considering the aggravating and mitigating factors, requires
5 | the conclusion that Respondent should be censured.

6 | 8. Any Finding of Fact which should be deemed a Conclusion
7 | of Law is hereby adopted as such.

8 |
9 | ORDER OF CENSURE

10 | Based upon the foregoing Findings of Fact and Conclusions, the
11 | Commission determines that Respondent violated Canons 1, 2(A),
12 | 3(A)(3 and 4) and 3(C)(1)(a) of the Code of Judicial Conduct, and
13 | hereby **CENSURES** Respondent and orders him to take the following
14 | corrective actions:

- 15 | 1. Read and follow the Code of Judicial Conduct.
- 16 | 2. Treat all persons appearing before him with respect,
17 | courtesy, and dignity regardless of their differences and
18 | refrain from all impermissible ex parte contacts.
- 19 | 3. Disqualify himself where his impartiality can be
20 | reasonably questioned.
- 21 | 4. Attend the next available offering of a cultural
22 | diversity program sponsored by the Minority and Justice
23 | Commission. Documentation of attendance shall be filed with
24 | the Commission within thirty days of attendance.
- 25 | 5. Within thirty days from the date that this Order is
26 | final, Respondent shall write a letter of apology to each
27 | petitioner. Such letters shall be filed with the Commission.
28 | The Commission will forward the letters to the petitioners.
- 29 | 6. Respondent shall refrain from conduct that could
30 | cause a repetition of the violations found herein.

1 DATED this 3rd day of February, 1995.

2 COMMISSION ON JUDICIAL CONDUCT

3
4 (see attached opinion)
5 G. Douglas Ferguson, Presiding

Ruth Schroeder
Ruth Schroeder, Chair

6 Stephen M. Brown
7 Hon. Stephen M. Brown

Nancyhelen Hunter Fischer
Nancyhelen Hunter Fischer

8 (see attached opinion)
9 K. Collins Sprague

Margo J. Keller
Margo Keller

10 Dale Brighton
11 Dale Brighton

(see attached opinion)
Hon. Susan Dubuisson

12 Vivian Caver
13 Vivian Caver

H. Joseph Coleman
Hon. H. Joseph Coleman

14 Pamela T. Praeger
15 Pamela T. Praeger