ORIGINAL

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED
AUG 23 1995
COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of Honorable Ralph G. Turco, Tacoma Municipal Court.	)	No. 94-1853-F-54 ANSWER TO STATEMENT OF CHARGES

COMES NOW, the Honorable Ralph G. Turco, by and through his attorney Kurt M. Bulmer, and Answers the Statement of Charges dated August 8, 1995, as follows:

1. Respondent admits the paragraph identified as "I. Background."

2. Respondent admits those parts of Paragraph 1 of "II. Facts Supporting Charges" which assert that he conducted a bench trial in the Niswanger case on July 19, 1994, that he found the defendant guilty of assault in the fourth degree and that the quoted words were said.

Respondent denies that Paragraph 1 of "II. Facts Supporting Charges" accurately reflects the Niswanger proceedings. The quoted language is not in context. If the quoted language were in context it would show that the language occurred during the sentencing phase of the proceeding and that Judge Turco was addressing the defendant's defense that he had come into the apartment with the express permission of his girlfriend who had then attacked him. If the quoted language were in context it would show that Judge Turco was fulfilling his responsibilities as a judge to make clear to the defendant that even though the defendant had been upset by this sequence of events, the

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defendant could not assault his girlfriend.

If the quoted language were in context it would show that in the circumstances the language would have been understood by reasonable persons present that it was not meant literally and was a turn of phrase meant to summarize the defendant's sense of frustration at having been given permission to enter and then being attacked.

3. Respondent admits those parts of Paragraph 2 of "II. Facts Supporting Charges" which assert that he conducted a bench trial in the Payne case on June 2, 1994, that he found the defendant guilty of assaulting his wife in the fourth degree and that the quoted words were said.

Respondent denies that Paragraph 2 of "II. Facts Supporting Charges" accurately reflects the Payne proceedings. The quoted language is not in context. If the quoted language were in context it would show that the language occurred during the sentencing phase of the proceedings and that Judge Turco was fulfilling his responsibilities as a judge by addressing the defendant's defense that he had gone to the drug apartment in order to rescue his wife and the mother of their three children. If the quoted language were in context it would show that Judge Turco was making clear to the defendant that even though the defendant believed that he was justified in going on such rescue mission that this belief did not justify the assault on his wife.

If the quoted language were in context it would show that in the circumstances the language would have been understood by reasonable persons present that it was not meant as a form of

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praise for the defendant but rather was clearly meant to communicate to the defendant that the defendant could not use a "rescue" mission to justify the assault on his wife.

4. Respondent admits the assertions in Paragraph 3 of "II. Facts Supporting Charges".

Respondent denies that Paragraph 3 of "II. Facts Supporting Charges" accurately reflects the full colloquy which occurred. The quoted language is not in context. If the quoted language were in context it would show that in the circumstances the language quoted would have been understood by a reasonable person present to be an informal discussion between the judge and an assistant city attorney on the frequency of dismissals of domestic violence cases because the victim does not want to participate and that the judge was addressing a concern the assistant city attorney had about the fact the if the victims will not cooperate cases must be dismissed.

5. Respondent admits the assertions in Paragraph 4 of "II. Facts Supporting Charges".

Respondent denies that the prior censure is a "Fact Supporting Charges." Respondent's prior censure is irrelevant to a determination as to whether or not the assertions in Paragraphs 1, 2 and 3 of "II. Facts Supporting Charges" constitute violations of the charged Canons. It is a denial of equal protection and due process and it is an inappropriate submission of evidence for the prior censure to have been alleged in the Statement of Charges.

6. Respondent denies the assertion in the paragraph identified as "III. Charges" that probable cause exists for

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believing that he has violated Canons 1, 2(A) and 3(A)(3) and further denies that he has violated those provisions. The respondent admits that the language of the Canons is as set forth in the Statement of Charges but by doing so does not waive his right to defend based on the full provisions of the cited Canons, other Canons or the Comments, Preamble and notes to the Code of Judicial Conduct.

7. Respondent admits those parts of the paragraphs identified as "IV. New Code of Judicial Conduct" which assert that the Supreme Court adopted amendments to the Code of Judicial Conduct, that the language as quoted is as set forth in the Amended Code of Judicial Conduct and that respondent's actions occurred prior to the adoption of the Amended Code.

Respondent denies the assertions in the paragraphs identified as "IV. New Code of Judicial Conduct" that probable cause exists for believing that he has violated Canons 1, 2(A), 3(A)(3) and 3(A)(5) of the Amended Code of Judicial Conduct and further denies that he has violated those provisions. The respondent admits that the language of the Amended Canons is as set forth in the Statement of Charges but by doing so does not waive his right to defend based on the full provisions of the cited Canons, other Canons or the Comments, Preamble and notes to the Code of Judicial Conduct.

Respondent affirmatively asserts that the provisions of the Amended Code of Judicial Conduct cannot be used to find a violation against him because the allegations found in Paragraphs 1, 2, 3 and 4 of "II. Facts Supporting Charges" all involve events which occurred prior to the adoption of the

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Amended Code of Judicial Conduct.

FURTHER RESPONSE

By way of further response and in answer to the allegations made against him the respondent further answers as follows:

8. As to all matters involving legal determinations and determinations as to the appropriate manner and means to carry out sentencing made in respondent's official capacity as Municipal Court Judge, the Commission is without authority to review such matters and may not substitute its judgement nor impose sanctions for respondent's actions in carrying out his duties.

9. As to all matters involving how respondent carried out the imposition of sentencing, the Commission is without authority to impose sanctions since it is an improper intrusion into the independence of the judiciary and the discretionary authority granted to an elected official for the Commission to discipline respondent for the language quoted in the Statement of Charges.

10. The Commission is without authority to substitute its judgement for respondent's as to the best means to make it clear to the defendants in the Niswanger and Payne cases that their perceived defenses were not adequate.

11. As to remarks made by respondent in connection with the Niswanger and Payne cases and his colloquy with the assistant city attorney, the Commission is without authority to impose a sanction since such remarks are protected speech under the United States Constitution and Washington State Constitution, were made pursuant to respondent's obligations as a public

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official and are allowable conduct pursuant to the provisions of the Code of Judicial Conduct - Canon 3(A)(6) which provides in relevant part:

> This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

12. If there was a violation of any of the Canons charged it was de minimis and does not justify the imposition of any sanction.

13. There was no violation of any provision of the Code of Judicial Conduct nor is any sanction justified since judges are required to conduct themselves in a proper manner but are not subject to a standard of conduct based on the most hyper-sensitive of persons in the community but rather are subject to a standard of a reasonable person in the community. A reasonable person in the community who was aware of all the facts and circumstances surrounding the allegedly improper language would not believe that respondent had acted in a manner contrary to the Code of Judicial Conduct.

REQUEST FOR DISMISSAL

14. Respondent has not violated the Code of Judicial Conduct and the allegations against him should be dismissed.

Dated this 22nd day of August, 1995.

Kurt M. Bulmer, WSBA 5559
Attorney for Respondent
Judge

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