

FILED

OCT - 9 1996

COMMISSION ON JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In Re the Matter of:) No. 94-1693-AF-62
)
The Honorable Merle E. Wilcox,) ANSWER TO STATEMENT
Island County District Court) OF CHARGES
4114 400th Avenue West)
Oak Harbor, WA 98277-2988)
_____)

I.

The respondent, the Honorable Merle E. Wilcox, admits the allegations set forth in paragraph I of the Statement of Charges.

II.

The respondent denies the allegations set forth in paragraph II(1), II(2) and II(3) of the Statement of Charges.

III.

The respondent admits that the Commission has made a probable cause finding with respect to its decision to file a Statement of Charges. The respondent denies that probable cause exists to proceed on a Statement of Charges since the respondent has fully complied with the terms of the Order of Censure. Specifically, Judge Wilcox submitted to and obtained an alcohol evaluation from a qualified and certified chemical dependency counselor. The Commission's staff was provided with a copy of the counselor's initial report and recommendation, the raw data utilized by him in arriving at his conclusions, and a narrative report describing, in detail, the basis of his findings and recommendation.

Judge Wilcox fully complied with the terms of the Order of Censure directing him to continue his psychological counseling treatment focusing on his "failure to recognize and respect appropriate personal boundaries of others, particularly women." Judge

ANSWER TO STATEMENT OF
CHARGES 1

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1 Wilcox utilized the services of Kenneth E. Sebens, an MSW, who has a counseling
2 practice located in Oak Harbor, Washington. Mr. Sebens provided the Commission's staff
3 with three separate narrative reports describing a treatment plan and treatment progress as
4 provided and required by the terms of the Order of Censure.
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6 **IV.**

7 The Amended Order for Medical Examination exceeds the terms and authority of
8 the Order of Censure entered on December 1, 1995. Specifically, nothing contained
9 within the Order of Censure permits the Commission to order Judge Wilcox to submit to
10 any type of medical or psychological evaluation by a person chosen by Commission staff.
11 The Order of Censure simply provides that "respondent shall be subject to further
12 evaluation and treatment to assure successful compliance with this order." The only
13 evaluation and treatment contemplated within the terms of the Order of Censure was that
14 being provided by Judge Wilcox's care provider.
15

16 **V.**

17 The Commission's refusal to accept the report submitted by Mr. Pederson and Mr.
18 Sebens on behalf of Judge Wilcox represents arbitrary and capricious action. No
19 justification exists for the Commission's determination that additional evaluation and
20 treatment should be required or that the same should be provided by a person other than
21 the health care professional providing services to Judge Wilcox.
22

23 **VI.**

24 The Amended Order for Medical Examination violates Judge Wilcox's
25 constitutional right to privacy, his right to maintain confidentiality of medical records,
26 counseling records and records relating to alcohol evaluation and treatment. Nothing
27 within the terms of the Order of Censure implies or requires that Judge Wilcox waive his
28 right to confidentiality with respect to these records or issues.
29


30 **VII.**

31 The Amended Order for Medical Examination was obtained without adequate
32 notice or opportunity for Judge Wilcox to be heard in opposition thereto. The entry of the
order violated Judge Wilcox's constitutional right to procedural due process.

1 Judge Wilcox is in full compliance with the terms of the Order of Censure. The
2 Commission has exceeded its authority in issuing the Amended Order for Medical
3 Examination. The Commission's requirement that Judge Wilcox waive his right to
4 confidentiality exceeds the scope of the Order of Censure and is unlawful. The
5 respondent, Judge Merle E. Wilcox respectfully requests, therefore, that the Statement of
6 Charges be dismissed.
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8 DATED this 7th day of October, 1996.

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