

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED

DEC -1 1995

In Re the Matter of:

The Hon. Merle E. Wilcox
District and Municipal Courts
of Island County

NO. 94-1693-F-52

COMMISSION ON JUDICIAL CONDUCT

CONCURRENCE WITH DISSENT


I join in the dissents of Commission members K. Collins Sprague and Philip J. Thompson.

There is obviously a serious disagreement on the Commission as to what constitutes clear, cogent and convincing evidence in this case. There should, however, be no disagreement about facts not in evidence. Yet the majority imposes sanctions that suggest Respondent, to use the vernacular, is some kind of head case. This, despite the total absence of any mention, suggestion, hint or allegation in five long days of testimony that alcohol or any psychological disorder compromised his conduct on the bench. Even given the majority's own dubious findings, the last incident in Respondent's so-called "pattern of inappropriate sexual behavior" occurred at least six years ago and the only clearly established occasion of inebriation took place in 1991. By what logic then does the majority require a chemical/alcohol abuse evaluation and indeterminate psychological treatment?

Add to this clear invasion of Respondent's privacy, the many other anomalies in this case -- its origins in the complaint of a disgruntled ex-wife; the fact that none of the incidents cited in the majority's findings were known to the public until the Commission issued its headline-grabbing and largely unproven statement of charges; that the alleged infractions of the code took place from five to 17 years ago; that the principal charge -

1 child sexual molestation - was unanimously rejected. All this and more suggest that the
2 majority's conclusions themselves constitute a pattern of overkill.

3 DATED this 1 day of December, 1995.

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5 
6 Anthony Thain