

FILED
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COMMISSION ON
JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
FOR THE STATE OF WASHINGTON

In Re the Matter of

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

NO. 94-1693-F

STATEMENT OF CHARGES

I. BACKGROUND

The Honorable Merle E. Wilcox ("Respondent") is now and has been since 1982 a Judge of the Municipal and District Courts of Island County.

On December 2, 1994, Respondent was sent a letter from the Commission on Judicial Conduct informing him that a Verified Statement was filed in accordance with WAC 292-12-010(4) and that the Commission was pursuing initial proceedings. A Statement of Allegations was enclosed, and a response was invited. Respondent responded to the Statement of Allegations on December 29, 1994.

II. FACTS SUPPORTING CHARGES

A. Child Molestation and Sexual Misconduct with a Minor

1. Respondent pursued a course of conduct involving child molestation and sexual misconduct with a minor commencing before becoming a judge and continuing thereafter.

STATEMENT OF CHARGES - 1

[22431-0001/SL951280.166]

PERKINS COIE
1201 Third Avenue, 40th Floor
Seattle, Washington 98101-3099
(206) 583-8888

1 a. In about 1976, while dancing with 12 year-olds Janiece and Liz Jungell,
2 Respondent's soon-to-be-step-daughters, Respondent rubbed the vagina of each girl.
3

4 b. In about 1982, when Janiece Jungell was approximately 18 years old,
5 Respondent entered her room intoxicated and attempted to kiss her on the lips while she was
6 sleeping.
7

8 c. Between about 1986 and 1990, Respondent repeatedly tickled and
9 slipped his hands onto the breasts of Bethany Williams, his then-step-daughter, who was 11-
10 14 years old.
11

12 d. Respondent often entered the bathroom while his then-step-daughters,
13 Janiece Jungell and Bethany Williams, were coming out of the shower or dressing.
14

15 **B. Assault of Wife and Reckless Endangerment**
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17 1. In May 1991, while attending a judicial conference in Richland, Washington,
18 Respondent became intoxicated and verbally, sexually and physically assaulted M. Lynne
19 Wilcox, his then-wife. Respondent poured a bottle of beer on M. Lynne Wilcox, kicked her in
20 the buttocks, pinned her against the wall, grabbed and pulled her breasts, and jammed his
21 fingers in her vagina.
22

23 **C. Conduct in the Course of Judicial Duties**
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25 1. Disqualifications due to personal bias, ex parte communication, inappropriate
26 demeanor:
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28 a. In January 1985, Respondent failed to disqualify himself from presiding
29 over a judicial matter (State v. Walter F. Williams, Island County District Court No. 00105,
30 filed January 8, 1985) involving the then-estranged spouse of M. Lynne (Williams) Wilcox.
31 Respondent had commenced a personal relationship with her and had personal knowledge of
32 the claim before him. At the arraignment proceeding on January 16, 1985, Respondent
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1 entered Defendant's plea of not guilty and set pre-trial (March 12, 1985) and trial dates
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3 (March 21, 1985). Subsequent to the arraignment proceeding, Respondent recused himself
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5 from the Williams' case.
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7 b. In January 1985, Respondent engaged in ex parte communications with
8
9 M. Lynne (Williams) Wilcox prior to a judicial proceeding involving charges of simple assault
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11 against M. Lynne (Williams) Wilcox by her then-estranged spouse Walter F. Williams. (State
12
13 v. Walter F. Williams, Island County District Court No. 00105, filed January 8, 1985).
14

15 Following the proceeding at issue, Respondent admitted to M. Lynne (Williams) Wilcox that
16
17 he "put his career on the line" by presiding over the matter.
18

19 c. In January 1985, Respondent verbally abused Ian Millikan, an attorney
20
21 presenting an affidavit for the removal of a newly-appointed pro tem judge on behalf of his
22
23 client, Walter F. Williams. Respondent was intemperate and discourteous and accused Ian
24
25 Millikan of "screwing with his court."
26

27 2. Ticket fixing:
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29 a. In the fall of 1985, Respondent expunged without judicial process,
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31 colloquially known as "fixed," a traffic citation issued to M. Lynne Wilcox by removing the
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33 citation from the appropriate file at the courthouse and adding the necessary cash (\$16) to
34
35 balance the citation records. Certified Department of Licensing records as of 1994 indicate
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37 that M. Lynne Wilcox has "no violation convictions or accidents within the past 10 years."
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39 b. Sometime after 1985, Respondent offered to expunge without judicial
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41 process, colloquially known as "fix," two different traffic citations issued to Tom Wolfe, a
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43 friend and construction contractor working for Respondent.
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III. BASIS FOR COMMISSION ACTION

The Commission investigation includes conduct occurring before Respondent became a judge when such conduct relates to a complaint filed against the judge. RCW 2.64.057.

The Commission has determined that probable cause exists for believing that Respondent has violated Canons 1,¹ 2(A),² 2(B),³ 3(A)(2),⁴ 3(A)(3),⁵ 3(A)(4),⁶ 3(B)(1)⁷ and 3(C)(1)(a)⁸ of the Code of Judicial Conduct, which state:

CANON 1

**Judges Should Uphold the Integrity and
Independence of the Judiciary**

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

¹ Section II, ¶¶ A, B and C.

² Section II, ¶¶ A, B and C; RCW 9A.44.083; RCW 9A.44.086; RCW 9A.44.096 (child molestation and sexual misconduct with a minor); RCW 9A.36.021; and RCW 9A.36.050 (assault of wife and reckless endangerment).

³ Section II, ¶¶ C(1)(a), (b), (c), 2(a) and (b).

⁴ Section II, ¶ C(1)(c).

⁵ Section II, ¶ C(1)(c).

⁶ Section II, ¶ C(1)(b).

⁷ Section II, ¶¶ C(2)(a) and (b).

⁸ Section II, ¶¶ C(1)(a) and (b).

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CANON 2

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

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

(B) Judges should not allow their families, social, or other relationships to influence their judicial conduct or judgment. Judges should not lend the prestige of their office to advance the private interests of others; nor should judges convey or permit others to convey the impression that they are in a special position to influence them. Judges should not testify voluntarily as a character witness.

CANON 3

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

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

(A) Adjudicative Responsibilities.

(2) Judges should maintain order and decorum in proceedings before them.

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

(4) Judges should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. Judges, however, may obtain the advice of a disinterested expert on the law applicable

1 to a proceeding before them, by amicus curiae only, if they afford the parties
2 reasonable opportunity to respond.
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5 (B) Administrative Responsibilities.
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7 (1) Judges should diligently discharge their administrative responsibilities,
8 maintain professional competence in judicial administration, and facilitate the
9 performance of the administrative responsibilities of other judges and court
10 officials.
11

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13 (C) Disqualification.
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15 (1) Judges should disqualify themselves in a proceeding in which their
16 impartiality might reasonably be questioned, including but not limited to
17 instances where:
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19 (a) the judge has a personal bias or prejudice concerning a party, or
20 personal knowledge of disputed evidentiary facts concerning the
21 proceeding.
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26 **IV. NOTIFICATION OF RIGHT TO FILE A WRITTEN ANSWER**
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28 In accordance with WAC 292-12-030(5), Respondent is herewith informed that a
29 written answer may be filed with the Commission to the charges contained in the Statement of
30 Charges within twenty-one (21) days after the date of service. If Respondent does not file a
31 written answer, a general denial will be entered on his behalf. The Statement of Charges and
32 Answer shall be the only pleading required.
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1 DATED this 7th day of May, 1995.
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4 COMMISSION ON JUDICIAL CONDUCT OF
5 THE STATE OF WASHINGTON
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8
9 By David Akana
10

11 David Akana
12 Executive Director
13 P.O. Box 1817
14 Olympia, WA 98507
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