

BEFORE THE COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON

FILED

DEC -1 1995

In Re the Matter of:

The Honorable Merle E. Wilcox  
Municipal and District Courts  
of Island County  
4114 400th Avenue W.  
Oak Harbor, WA 98277-2988

No. 94-1693-F-52

COMMISSION ON JUDICIAL CONDUCT

COMMISSION DECISION

I.

A. A Fact Finding hearing was held pursuant to Commission on Judicial Conduct rules as ordered by the Commission on Judicial Conduct ("Commission") on September 25 through 29, 1995 in Coupeville. Members of the Commission present were Hon. Stephen M. Brown (presiding), Dale Brighton, Gregory R. Dallaire, Hon. Susan Dubuisson, Nancyhelen Hunter Fischer, Margo Keller, Ruth Schroeder, Chair, K. Collins Sprague, Anthony Thein, and Hon. Philip Thompson.

B. Respondent Judge Merle E. Wilcox appeared in person and by his attorney, Christon C. Skinner. The Commission was represented by its attorneys, M. Margaret McKeown and Kari Anne Smith.

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

D. Having heard or read the testimony, and having considered the evidence, and having considered the arguments of the parties, the Commission finds by clear, cogent and convincing evidence the following:

II. FINDINGS OF FACT

A. The Honorable Merle E. Wilcox (Respondent herein) is now and was, since January, 1983, a Municipal Court and District Court Judge of Island County. Before his election in 1983 and beginning sometime in 1981, Respondent performed the duties of a judge pro tem at the Snohomish County Evergreen District Court and the Island County

1 District Court.

2 B. The Respondent, Merle Wilcox, engaged in the following conduct outside  
3 the courthouse:

4 1. In about 1977, Respondent danced with his 12-year old soon-to-be-  
5 stepdaughters, Janiece and Liz Jungell and that the evidence established that some  
6 touching occurred which was uncomfortable to the children.

7 2. Respondent married Linda Andrews, mother of the twin girls, in 1977.

8 3. On several occasions, without permission, Respondent entered the  
9 bathroom while his step-daughter, Janiece Jungell, was coming out of the shower.

10 4. In 1982, when Liz Jungell was 17 years old on a river rafting trip with  
11 Respondent, he put his arm around her and while appearing to whisper, he put his  
12 tongue in her ear. Liz Jungell found this conduct to be offensive and unwelcome.

13 5. Also in 1982, when Liz Jungell was sitting on a couch, Respondent  
14 put one knee on each side of her straddling her until she yelled at him to stop. Liz  
15 Jungell found this conduct to be offensive and unwelcome.

16 6. In 1983, when Janiece Jungell was approximately 18 years old,  
17 Respondent, who had been drinking, entered her bedroom and kissed her on the lips  
18 while she was sleeping. Janiece Jungell was awakened and offended by Respondent's  
19 unwelcomed actions.

20 7. The marriage of Respondent to Linda Andrews was dissolved in  
21 1983.

22 8. Respondent married M. Lynne Williams in 1986.

23 9. Between 1986 and 1990 on several occasions, Respondent tickled  
24 and, in the course of that conduct, touched the breasts of Bethany Williams, his step-  
25 daughter, who was 11 years to 14 years old during that time period.

26 10. On several occasions, without permission, Respondent entered the  
27 bathroom or bedroom of his step-daughter, Bethany Williams, while she was bathing or

1 | dressing.

2 |           11. In May 1991, while attending a judicial conference in Richland,  
3 | Washington, Respondent became intoxicated and verbally and physically assaulted his  
4 | wife, M. Lynne (Williams) Wilcox. Respondent poured beer on her, kicked her in the  
5 | buttocks, pinned her against the bed, grabbed and pulled her breasts, and attempted to  
6 | grab her in the area of her vagina.

7 |           C. The Respondent, Merle Wilcox, engaged in the following acts while  
8 | performing judicial duties:

9 |           1. In January 1985, Respondent initially recused himself and then  
10 | disregarded his recusal and participated in a judicial matter. (*State v. Walter F. Williams*,  
11 | Island County District Court No. 00105, filed January 8, 1985.) This matter involved the  
12 | then-estranged spouse of M. Lynne Williams. Respondent had commenced a personal  
13 | relationship with her and had prior knowledge that this matter would come before him.

14 |           2. When defendant Williams's counsel, Ian Millikan, objected to the  
15 | assignment of Judge pro tem Don Priest, Respondent would not permit Millikan to file an  
16 | affidavit of prejudice against Judge Priest. Instead, Respondent further participated by  
17 | requiring that it be filed against himself, thereby taking away defendant's right to file an  
18 | affidavit against Judge Priest.

19 |           3. There was insufficient evidence to show that Respondent verbally  
20 | abused Ian Millikan, an attorney, in January, 1985.

21 |           4. In the fall of 1985, Lynne Williams came to the Island County District  
22 | Court to visit Respondent. While there, Lynne Williams and Cindy Smith, a court clerk,  
23 | joked about a traffic citation which Ms. Williams had recently received. Respondent, who  
24 | had been and was known to be dating Lynne Williams for approximately one year at that  
25 | time, walked to the front counter. Respondent told Ms. Williams that if she wanted a  
26 | mitigation hearing he would take care of it right then. Respondent applied the same  
27 | standard used to mitigate similar citations, i.e., he reduced the fine by one-half. Because



1 This conduct violates Canon 1 which requires a judge to observe high standards  
2 of conduct, Canon 2 which provides that judges should avoid impropriety, or the  
3 appearance thereof, in all their activities, and specifically Canon 2(A), which provides that  
4 judges should respect and comply with the law and should conduct themselves at all  
5 times in a manner that promotes public confidence in the integrity of the judiciary.

6 4. There is no clear, cogent, and convincing evidence that Respondent  
7 engaged in improper ex parte communications as alleged in Section II.C., Paragraph  
8 (1)(b) of the Statement of Charges.

9 5. There is clear, cogent, and convincing evidence that Respondent  
10 acted improperly by requiring the party before him to file an affidavit of prejudice against  
11 him after he had recused himself as found in Paragraph II.C.2 of the Findings of Fact.

12 This conduct violates Canon 1 which requires a judge to observe high standards  
13 of conduct, Canon 2 which provides that judges should avoid impropriety, or the  
14 appearance thereof, in all their activities, and Canon 2(A), which provides that judges  
15 should respect and comply with the law and should conduct themselves at all times in  
16 a manner that promotes public confidence in the integrity of the judiciary, and Canon  
17 2(B), which provides that judges should not allow their social or other relationships to  
18 influence their judicial conduct, nor convey the impression that they are in a special  
19 position of influence.

20 6. There is no clear, cogent, and convincing evidence that Respondent  
21 verbally abused Ian Millikan, an attorney, in January 1985 as alleged in Section II.C.,  
22 Paragraph (1)(c) of the Statement of Charges.

23 7. There is no clear, cogent, and convincing evidence that Respondent  
24 "fixed" or offered to "fix" the citation as alleged in Section II, Paragraph C(2)(a) of the  
25 Statement of Charges.

26 8. There is clear, cogent, and convincing evidence that Respondent  
27 conducted a mitigation hearing for Lynne Williams and paid her fine. This conduct

1 violates Canon 2 which provides that judges should avoid impropriety, or the appearance  
2 thereof, in all their activities, and specifically Canon 2(B), which provides that judges  
3 should not allow their relationships to influence their judicial conduct or judgment.

4 9. Although the above-referenced citation was in the exclusive  
5 possession of the court, and the violation was never entered on state records, there is  
6 no clear, cogent, and convincing evidence that Respondent removed the citation from the  
7 mailing envelope or otherwise caused the violation to be omitted from Ms. Wilcox's  
8 driving record.

9 10. The charges as alleged in Section II.C, Paragraph C(2)(b) of the  
10 Statement of Charges were dismissed at the close of the Commission's case.

11 11. There is clear, cogent and convincing evidence that Respondent  
12 conducted himself inappropriately towards Eileen Taylor Andersen in April of 1983.  
13 Respondent's conduct was unprofessional, unwelcome, and demeaning to the  
14 involuntary participant. This conduct violates Canon 1 which requires a judge to observe  
15 high standards of conduct, Canon 2 which provides that judges should avoid impropriety,  
16 or the appearance thereof, in all their activities, and specifically Canon 2(A), which  
17 provides that judges should respect and comply with the law and should conduct  
18 themselves at all times in a manner that promotes public confidence in the integrity of the  
19 judiciary. Respondent's conduct also violates Canon 3(A)(3) which provides that judges  
20 should be patient, dignified and courteous to persons with whom they deal in their official  
21 capacity.

#### 22 IV. SANCTIONS

23 A. The sanction imposed for violation of the Canons must be sufficient to  
24 restore and maintain the dignity and honor of the position and to protect the public from  
25 similar behavior in the future. *In re Buchanan*, 100 Wn.2d 396, 400 (1983).

26 B. In determining whether to impose a particular sanction, it is necessary to  
27 weigh mitigating and aggravating factors, if any, to arrive at an appropriate discipline in

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

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

19 *In re Deming* at pages 119-120.

20 C. The Commission concludes:

21 1. The misconduct which occurred in Respondent's private life outside  
22 the courtroom, i.e., with his stepdaughters and with his spouse, and in his official  
23 capacity, with a court employee, constitutes a pattern of misconduct.

24 2. The other misconduct which occurred in Respondent's official  
25 capacity were isolated instances.

26 3. Although there is no evidence that Respondent cannot technically  
27 conduct his duties, the conduct of the judge has caused a loss of respect for the  
28 judiciary. Public confidence in the integrity and impartiality of the judiciary is also impaired  
by Respondent's misconduct.

4. There was minimal exploitation of the judicial position by Respondent.

5. There has been no history of complaints concerning Respondent  
resulting in public statement of charges by the Commission.

6. Respondent has to some extent recognized the problems his

1 behavior has caused himself and others. During the marriage to Lynne (Williams) Wilcox,  
2 Respondent and Lynne Wilcox participated in marriage counseling. Respondent  
3 acknowledged that he has difficulty with intermittent drinking over the past several  
4 months. Finally, Respondent has recently participated in psychological counseling.

5 7. Respondent has served as an elected judge since 1983. He served  
6 as a judge pro tem before being elected judge.

7 D. The Commission concludes that Respondent violated the Code of Judicial  
8 Conduct as enumerated above, and that such violations detrimentally affect the integrity  
9 of the judiciary and undermine public confidence in the administration of justice.

10 E. Any Finding of Fact that should be deemed a Conclusion of Law is hereby  
11 adopted as such.

#### 12 ORDER OF CENSURE

13 Based upon the foregoing Findings of Fact and Conclusions, the Commission  
14 determines that Respondent violated Canons 1, 2(A and B), 3(A)(3) of the Code of  
15 Judicial Conduct, and hereby CENSURES Respondent and orders him to take the  
16 following corrective actions:

17 1. Undergo a full evaluation for chemical/alcohol abuse, and if  
18 recommended, continue his ongoing chemical/alcohol treatment.

19 2. Respondent shall continue psychological counseling treatment which  
20 was in progress at the time of the hearing and address the issues of the  
21 inappropriate behavior specified in this paragraph. Counseling must focus  
22 on Respondent's failure to recognize and respect appropriate personal  
23 boundaries of others, particularly women. The care provider shall provide  
24 a progress report at least quarterly to the Commission on the treatment  
25 progress as long as Respondent acts as a judge. The initial report shall  
26 include the treatment plan. The care provider shall also make  
27 recommendations as to completion of treatment. Respondent shall be



1 subject to further evaluation and treatment to assure successful compliance  
2 with this order.

3 3. Respondent shall not contact any of his former stepdaughters  
4 identified in this decision, nor shall he contact his former spouse, Lynne  
5 Williams Wilcox, nor shall he contact Eileen Taylor Andersen.

6 4. Respondent shall not retaliate against any witness appearing in this  
7 proceeding.

8 DATED this 1<sup>st</sup> day of December, 1995.

9  
10 (See attached opinion)  
Hon. Stephen M. Brown

(See attached opinion)  
Dale Brighton

11  
12 (See attached opinion)  
Gregory R. Dallaire

Susan A. Dubuisson  
Hon. Susan Dubuisson

13  
14 (See attached opinion)  
Nancyhelen Hunter Fischer

(See dissenting opinion)  
Margo Keller

15  
16 (See attached opinion)  
Ruth Schroeder

(See dissenting opinion)  
K. Collins Sprague

17  
18 (See dissenting opinion)  
Anthony Thein

(See dissenting opinion)  
Hon. Philip J. Thompson