

FILED

MAR - 8 1996

BEFORE THE COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON

COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of

Honorable Kenneth L. Jorgensen  
Grant County Superior Court  
Division & C Sts. NW  
PO Box 37  
Ephrata, WA 98823-0037

No. 95-2016-F-60

STATEMENT OF CHARGES

I. BACKGROUND

The Honorable Kenneth L. Jorgensen ("Respondent") is now and has been since 1992 a Superior Court Judge of Grant County.

On August 2, 1995, 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 WAC 292-12-020(2), and that the Commission was pursuing initial proceedings. A Statement of Allegations was enclosed. Thereafter, on December 29, 1995, an Amended Statement of Allegations was provided to Respondent, accompanied by a cover letter in accordance with WAC 292-12-010(4) and WAC 292-12-020(2). On both occasions, the Respondent was invited to respond. Respondent responded to the initial Statement of Allegations on August 16, 1995 and responded to the Amended Statement of Allegations on January 8, 1996.

II. FACTS SUPPORTING CHARGES

A. Conduct in the Court of Judicial Duties

1. Failure to avoid impropriety or the appearance of impropriety and failure to perform the duties of his office impartially and diligently.

That in Cause No. 83-3-00290-7, Debbie Rae Cole (f/k/a Debbie Rae Smith) v. Travis Dean Smith, Respondent received a phone call from petitioner's mother, ex parte, improperly soliciting the quashing of a bench warrant issued by the Honorable

1 Evan Sperline, Judge of the Superior Court of Grant County. The file is highlighted  
2 throughout with information regarding the Affidavit of Prejudice filed against Respondent  
3 on record in the clerk's office. In addition, this record indicates Respondent signed off  
4 on this Affidavit on December 7, 1992. [Canons 1<sup>1</sup>, 2(A), 3(A)(4), 3(A)(5)<sup>2</sup>, and  
5 3(D)(1)(a)<sup>3</sup>.]

6 That between December 3, 1993 and January 11, 1994, the following matter  
7 occurred. In Cause No. 93-3-00536-0, Mark Steven Johnson v. Carol Johnson, the  
8 petitioner appeared before Respondent pro se, ex parte, without notice to the other party  
9 or other party's counsel. It is alleged Respondent unilaterally assumed jurisdiction over  
10 a cause of action, ex parte, at the request of the petitioner, based on a personal  
11 relationship. This cause of action was already pending before a court in the State of  
12 Arizona. It is alleged Respondent had knowledge of said cause of action and thereafter  
13 improperly issued an arrest warrant for the respondent named in the Grant County action,  
14 a resident of Arizona. It is alleged that, further, Respondent issued a writ of extradition  
15 and assisted in advising the petitioner as to the proper method to seek enforcement of  
16 said writ in the State of Arizona. Respondent then ordered dismissal of this matter. It is  
17 alleged that Respondent refused to consult with Judge William J. O'Neil, Judge of Pinal  
18 County, regarding the case pending in Arizona and refused to respond to his efforts to  
19 do so until after Respondent closed this case. [Canons 1<sup>4</sup>, 2(A), 2(B), 3(A)(1), 3(A)(4),  
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21 <sup>1</sup>The Supreme Court, by order of October 9, 1995, made amendments to the Rules of Court effective  
22 November 7, 1995, a section of which is the Code of Judicial Conduct [hereinafter CJC]. The previous  
23 Code of Judicial Conduct [hereinafter Prev. Code] was in effect and enforced by the Commission on  
Judicial Conduct since May 18, 1981, the date of the enabling legislation now codified as RCW 2.64.  
Canon 1 stated that "Judges Should Uphold the Integrity and Independence of the Judiciary".

24 <sup>2</sup>New section, *supra* note 1.

25 <sup>3</sup>Replaces section 3(C)(1)(a) Prev. Code, *supra* note 1.

26 <sup>4</sup>Prev. Code, *supra* note 1.  
27

1 3(A)(5)<sup>5</sup>, and 5(F).]

2 That Respondent was seen and overheard to have had repeated ex parte  
3 contacts with parties and counsel at locations outside of the court and off the record  
4 where issues in controversy were discussed and matters of substance appeared to be  
5 decided without notice to opposing counsel [Canons 1<sup>6</sup>, 2(A), 2(B), 3(A)(1), 3(A)(4),  
6 3(A)(5)<sup>7</sup>, and 5(F).]

7 2. Failure to perform adjudicative and administrative responsibilities in a  
8 competent fashion.

9 That Respondent's incompetence and failure to address competency  
10 problems have placed an unmanageable burden on the Superior Court Clerk's Office,  
11 administrative staff, and Judge Evan Sperline. [Canons 1<sup>8</sup>, 2(A), 3(A)(1) and 3(B)(1).]

12 That Respondent has been repeatedly observed to be asleep on the bench  
13 while court is in session. [Canons 1<sup>9</sup> and 2(A).]

14 That Respondent has continuously demonstrated a level of competence  
15 below minimally accepted standards for one charged with the responsibility of sitting on  
16 the Superior Court bench in the State of Washington, as evidenced by the lack of  
17 confidence by the practicing bar, Respondent's unacceptability to act as a visiting judge  
18 in King County, Asotin County, Adams County, Lincoln County, and Spokane County, and  
19 Respondent's demonstrated lack of familiarity with basic Rules of Civil Procedure,  
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22 <sup>5</sup>New section, *supra* note 1.

23 <sup>6</sup>*Id.*

24 <sup>7</sup>New section, *supra* note 1.

25 <sup>8</sup>*Id.*

26 <sup>9</sup>*Id.*

1 statutory law, and civil law. [Canons 1<sup>10</sup>, 2(A), 3(A)(1) and 3(B)(1).]

2 That on December 15, 1995 Respondent had ex parte communications with  
3 the Grant County Prosecutor in which Respondent was overheard discussing the viability  
4 of a plea bargain in Grant County Superior Court Cause No. 95-1-00496-5, State of  
5 Washington v. Gregory Paul Roberts. Assigned defense counsel, Tom Earl, was not  
6 notified, was not present, and did not consent to this ex parte discussion. [Canons 1<sup>11</sup>,  
7 2(A), 3(A)(4) and 3(A)(5)<sup>12</sup>.]

8 3. Failure to Disqualify Oneself.

9 That in Cause No. 93-1-00001-7, State of Washington v. Gary Domenquez,  
10 Respondent refused to disqualify himself upon proper motion by defense counsel based  
11 upon the fact that the defendant had previously been prosecuted for residential burglary  
12 by Respondent. [Canons 1<sup>13</sup>, 2(A), 3(A)(5)<sup>14</sup>, 3(D)(1)(a)<sup>15</sup>, and 3(D)(1)(b)<sup>16</sup>.]

13 **III. BASIS FOR COMMISSION ACTION**

14 The Commission has determined that probable cause exists for believing that  
15 Respondent has violated Canons 1<sup>17</sup>, 2(A), 2(B), 3(A)(1), 3(A)(4), 3(A)(5)<sup>18</sup>, 3(A)(6),  
16  
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18 <sup>10</sup>*Id.*

19 <sup>11</sup>*Id.*

20 <sup>12</sup>New section, *supra* note 1.

21 <sup>13</sup>*Id.*

22 <sup>14</sup>New section, *supra* note 1.

23 <sup>15</sup>See note 3, *supra*.

24 <sup>16</sup>*Id.*

25 <sup>17</sup>New section, *supra* note 1.

26 <sup>18</sup>New section, *supra* note 1.

1 3(B)(1), 3(D)(1)(a)<sup>19</sup>, 3(D)(1)(b)<sup>20</sup>, and 5(F) of the Code of Judicial Conduct, which  
2 state:

3 **CANON 1**

4 **Judges Shall Uphold the Integrity and**  
5 **Independence of the Judiciary<sup>21</sup>**

6 An independent and honorable judiciary is indispensable to  
7 justice in our society. Judges should participate in establishing,  
8 maintaining, and enforcing high standards of judicial conduct, and  
9 shall personally observe those standards so that the integrity and  
10 independence of the judiciary will be preserved. The provisions of  
11 this Code are to be construed and applied to further that objective.

12 **CANON 2**

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

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

18 (B) Judges should not allow family, social, or other  
19 relationships to influence their judicial conduct or judgment.  
20 Judges should not lend the prestige of judicial office to  
21 advance the private interests of the judge or others; nor  
22 should judges convey or permit others to convey the  
23 impression that they are in a special position to influence  
24 them. Judges should not testify voluntarily as character  
25 witnesses.

26 \* \* \*

27 **CANON 3**

28 **Judges Shall Perform the Duties of Their**  
**Office Impartially and Diligently**

\* \* \*

(A) Adjudicative Responsibilities.

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<sup>19</sup>See note 3, *supra*.

<sup>20</sup>*Id.*

<sup>21</sup>New section, *supra* note 1.

1  
2 (1) Judges should be faithful to the law and  
3 maintain professional competence in it. Judge should be  
4 unswayed by partisan interests, public clamor, or fear of  
5 criticism.

6 \* \* \*

7 (4) Judges should accord to every person who is  
8 legally interested in a proceeding, or that person's lawyer, full  
9 right to be heard according to law, and, except as authorized  
10 by law, neither initiate nor consider ex parte or other  
11 communications concerning a pending or impending  
12 proceeding. Judges, however, may obtain the advice of a  
13 disinterested expert on the law applicable to a proceeding  
14 before them, by amicus curiae only, if they afford the parties  
15 reasonable opportunity to respond.

16 (5) Judges shall perform judicial duties without bias  
17 or prejudice.<sup>22</sup>

18 (6) Judges should dispose promptly of the business  
19 of the court.

20 (B) Administrative Responsibilities.

21 (1) Judges should diligently discharge their  
22 administrative responsibilities, maintain professional  
23 competence in judicial administration and facilitate the  
24 performance of the administrative responsibilities of other  
25 judges and court officials.

26 \* \* \*

27 (D) Disqualification.<sup>23</sup>

28 (1) Judges should disqualify themselves in a  
proceeding in which their impartiality might reasonably be  
questioned, including but not limited to instances in which:

(a) the judge has a personal bias or  
prejudice concerning a party, or personal  
knowledge of disputed evidentiary facts  
concerning the proceeding;

(b) the judge previously served as a

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<sup>22</sup>New section, *supra* note 1.

<sup>23</sup>See note 3, *supra*.

1 lawyer or was a material witness in the matter in  
2 controversy, or a lawyer with whom the judge  
3 previously practiced law served during such  
association as a lawyer concerning the matter  
or such lawyer has been a material witness  
concerning it;

4 \* \* \*

5 **CANON 5**

6 \* \* \*

7 (F) Practice of Law. Judges shall not practice law.  
8 Notwithstanding this prohibition, judges may act pro se and  
9 may, without compensation, give legal advice to and draft or  
review documents for members of their families.

10 **IV. NOTIFICATION OF RIGHT TO FILE WRITTEN ANSWER**

11 In accordance with WAC 292-12-030(5), the Respondent is herewith informed that  
12 a written answer may be filed with the Commission to the charges contained in the  
13 Statement of Charges within 21 days after the date of service. If Respondent does not  
14 file a written answer, a general denial will be entered on his behalf. The Statement of  
15 Charges and answer shall be the only pleading required.

16 DATED this 8<sup>th</sup> day of March, 1996

17 COMMISSION ON JUDICIAL CONDUCT  
18 OF THE STATE OF WASHINGTON

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