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COMMISSION ON JUDICIAL CONDUCT

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BEFORE THE COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON

|                                |   |                      |
|--------------------------------|---|----------------------|
| In Re the Matter of:           | ) |                      |
|                                | ) |                      |
| Justice Richard B. Sanders     | ) | No. 96-2173-F-63     |
| Washington State Supreme Court | ) |                      |
| Temple of Justice              | ) | AMENDED ANSWER TO    |
| P. O. Box 40929                | ) | STATEMENT OF CHARGES |
| Olympia, WA 98504-0929         | ) |                      |

**I. Preliminary Statement**

The Honorable Richard B. Sanders hereby files his answer completely and unequivocally denying the allegations of the Commission on Judicial Conduct that he violated the Canons of the Code of Judicial Conduct. Justice Sander's conduct did not diminish in any way the public confidence in the integrity, impartiality and independence of the judiciary. Neither did Justice Sanders engage in political activity inappropriate to his judicial office. Moreover, any determination that Justice Sanders' speech and conduct did constitute a violation of the Code of Judicial Conduct would violate Justice Sanders' rights under the United States and Washington State Constitutions. Justice Sanders' brief and general statement and appearance at a March for Life event are speech protected by the First Amendment of the United States Constitution and Article I, §5 of the Washington State Constitution and reflect Justice Sanders' religious conscience protected by the First Amendment of the United States Constitution and Article I, §11 of the Washington State Constitution. Finally, the entirely secretive and one-sided process utilized by the Commission in investigating, charging and prosecuting

AMENDED ANSWER TO  
STATEMENT OF CHARGES - 1

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1 Justice Sanders violates Justice Sanders' due process rights guaranteed by the Fifth Amendment of the  
2 United States Constitution and Article I, § 3 of the Washington State Constitution.

3 **II. Answers to Statement of Charges**

4 In Answer to the statement of charges, Justice Sanders states as follows:

- 5 1. Justice Sanders admits the matters alleged in Section I, paragraphs 1 and 2.
- 6 2. Justice Sanders admits that on January 26, 1996, after being sworn in as a Justice of  
7 the Washington Supreme Court, he addressed the March for Life event held at the Washington State  
8 Capital as alleged in Section II, paragraph 1 and denies the remainder of the paragraph.
- 9 3. Justice Sanders admits the matters alleged in Section II, paragraph 2.
- 10 4. Justice Sanders admits that he appeared at the event carrying a red rose as alleged in  
11 Section II, paragraph 3 and denies the remainder of the paragraph.
- 12 5. Justice Sanders denies the matters alleged in Section II, paragraph 4.
- 13 6. Justice Sanders admits that his introduction and statement are accurately transcribed in  
14 Section II, paragraph 5 and denies the characterization of the event as a "rally".
- 15 7. Justice Sanders denies the matters alleged in Section II, paragraph 6.
- 16 8. Justice Sanders denies the matters alleged in Section II, paragraph 7.
- 17 9. Justice Sanders denies that he violated any Canon of the Code of Judicial Conduct.

18 **III. Further Response**

19 By way of further response, Justice Sanders states as follows:

- 20 1. The facts alleged in the statement of charges do not state a basis for finding a violation  
21 of the Code of Judicial Conduct.
- 22 2. Justice Sanders' brief and general statement and appearance at a March for Life event  
23 are speech protected by the First Amendment of the United States Constitution and Article I, §5 of  
24 the Washington State Constitution.

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AMENDED ANSWER TO  
STATEMENT OF CHARGES - 2

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1           3.       Justice Sanders' brief and general statement and appearance at a March for Life event  
2 reflect Justice Sanders' religious conscience protected by the First Amendment of the United States  
3 Constitution and Article I, §11 of the Washington State Constitution.

4           4.       The Commission's effort to sanction Justice Sanders is based on the particular  
5 viewpoint stated by Justice Sanders and/or is based on the particular principles advanced by the  
6 March for Life and therefore constitutes invidious viewpoint discrimination which is prohibited by the  
7 First Amendment of the United States Constitution and Article I, §5 of the Washington State  
8 Constitution.

9           5.       The process utilized by the Commission in investigating, charging and prosecuting  
10 Justice Sanders violates Justice Sanders' due process rights guaranteed by the Fifth Amendment of the  
11 United States Constitution and Article I, § 3 of the Washington State Constitution.

12           6.       Justice Sanders intends to present a full and vigorous defense to the charges and  
13 anticipates taking all necessary discovery in the course of that defense. He therefore requests that any  
14 hearing date set allow sufficient time to accomplish such discovery. At a minimum, no hearing date  
15 should be set sooner than the sixty day period set forth for discovery in CJCRP Rule 22(b)(2).

16           7.       Justice Sanders is being singled out for sanction because of the particular viewpoint  
17 expressed in his conduct. Other Washington Judges, including Justices Dolliver and Johnson, have  
18 publicly stated positions that indicate their support for abortion rights. Although these positions were  
19 publicly reported in newspapers of general circulation in the area, the Commission did not take any  
20 action to sanction these Justices although their constitutional authority requires the Commission to  
21 act based on complaint or when they "otherwise has reason to believe that a judge or justice should  
22 be" sanctioned. Const. Art. IV, §31. See also WAC 292-12-010(1) (Commission member may make  
23 a complaint). Likewise Judge Darrah, in open court, "spoke out against the availability of handguns  
24 in our society," "exhorted the jurors to contact their legislators concerning the subject," and "urged a  
25 change in the law". Judge Darrah was found not to have violated the Cannons at issue here even  
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AMENDED ANSWER TO  
STATEMENT OF CHARGES - 3

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1 though the statements were "inappropriate" and "were likely to offend members of society"; and  
 2 because Judge Darrah "did not urge the jurors to take any particular position or pursue any particular  
 3 legislation or reform." In Re the Honorable John M. Darrah, CJC No. 89-782-F-14 (Commission on  
 4 Judicial Conduct 1989). Justice Sanders comments were less pointed than Judge Darrah's. Similarly,  
 5 Chief Justice Durham in her recent campaign for Justice ran advertisements that stated: "in the race  
 6 for Washington Supreme Court, our choice is clear. As our chief justice, Barbara Durham has  
 7 worked to keep sex offenders behind bars, defend the rights of victims and uphold Washington's death  
 8 penalty. While her opponents were representing death row inmates, Barbara Durham joined with  
 9 police and prosecutors to strengthen domestic violence laws. Justice Durham has worked to make  
 10 our neighborhoods safe -- supporting tough sentences for repeat offenders, community notification of  
 11 sex offenders and restitution for victims of crime." The Commission did not sanction Chief justice  
 12 Durham although these statements are more pointed than Justice Sanders' and although many cases  
 13 involving these issues are much more likely to come before the Court than issues relating to abortion.  
 14 Such viewpoint discrimination, is invidious in that it is based on an unjustifiable standard -- a pro-life  
 15 viewpoint. See, Thomas v. Bible, 694 F.Supp. 750, 767 (D.Nev. 1988). Such action violates the  
 16 First and Fourteenth Amendments of the United States Constitution and Art. 1, §§ 3 and 5 of the  
 17 Washington Constitution.

18 DATED this 10th day of February, 1997.

19 PRESTON GATES & ELLIS

20  
 21 By   
 22 Paul J. Lawrence, WSBA # 13557  
 23 Cooperating Attorney for the ACLU-W  
 24  
 25  
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AMENDED ANSWER TO STATEMENT OF CHARGES - 4

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