

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED
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COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of)
)
Honorable A. Eugene Hammermaster) No. 95-1937-F-67
Sumner, Orting and South Prairie)
Municipal Courts) **AMENDED**
Pierce County, Washington) **STATEMENT OF CHARGES**
_____)

Pursuant to authority granted in Washington State Constitution Article IV, Section 31, Revised Code of Washington (RCW), Chapter 2.64, and the Commission on Judicial Conduct Rules of Procedure ("CJCRP"), and at the order of the Commission on Judicial Conduct ("Commission"), this Statement of Charges alleging violations of the Code of Judicial Conduct ("CJC") by Honorable A. Eugene Hammermaster is filed, the Commission having determined probable cause to believe the following:

I. BACKGROUND

- A. Honorable A. Eugene Hammermaster ("Respondent" herein) is now and was at all times referenced herein, a Judge of the Sumner, Orting, and Wilkeson/South Prairie Municipal Courts in Pierce County, Washington.
- B. On May 14, 1997, the Commission, acting pursuant to CJCRP 17(e) served Respondent with a Statement of Allegations. Respondent provided a response to the Statement of Allegations, dated June 26, 1997. The Commission then served Respondent with a Supplemental Statement of Allegations dated August 1, 1997. Respondent provided a response to the Supplemental Statement of Allegations by letter dated August 22, 1997.
- C. On March 17, 1998, the Commission delivered a letter to Respondent informing him that the Commission was pursuing Initial Proceedings. Enclosed with the letter was a

Supplemental Statement of Allegations. Respondent filed a response to the Supplemental Statement of Allegations on April 9, 1998.

I. FACTS SUPPORTING CHARGES

A. Respondent had issued, or stated that he may issue, orders that are not within his authority or that may constitute an abuse of his authority. Such orders or statements constituted an abuse of Respondent's authority and exhibited a demeanor that is not respectful or dignified. Examples of these orders or statements include the following:

1. Respondent routinely stated in court that it is within his authority to hold defendants in jail indefinitely for failure to comply with fine payments or other orders of the Court. Respondent consistently threatened defendants with life sentences and with fines for contempt of court that would accrue at a rate of "\$40 per day, \$300 per week, \$1,200 per month and over \$12,000 per year." See specific cases below. These statements are part of a pattern of undignified courtroom demeanor and such orders are not within Respondent's authority. Such orders would not comply with state law regarding contempt or credit towards fines for time served. See RCW 10.01.180, Ch. 10.82 and Ch. 7.21.

Cases in which such orders or statements were made include the following:

a. City of Sumner v. Daniel Jay Link, Case No. 15779. See Exhibit 1, transcribed excerpt of proceedings of November 26, 1996.

b. City of Sumner v. Scott Anton Reisenauer, Case No. 13361. See Exhibit 2, transcribed excerpt of proceedings of November 8, 1996.

c. City of Orting v. David Alan Deen, Case No. C00000280. See Exhibit 3, transcribed excerpt of proceedings of November 8, 1996.

d. City of Orting v. Richard Norbert Cebula, Case No. C00000189. See Exhibit 4, transcribed excerpt of proceedings of November 8, 1996.

e. City of Sumner v. Enrique Ceras-Campos, Case No. C00010522. See Exhibit 5, transcribed excerpt of Proceedings of November 5, 1996.

f. City of South Prairie v. Clifford Raymond Batten, Case No. C00058228. See Exhibit 6, transcribed excerpt of proceedings of November 5, 1996.

g. City of Sumner v. Tracy Stuart Lybeck, Case No. 18523; and City of Orting v. Tracy Stuart Lybeck, Case No. 5382. See Exhibit 7, transcribed excerpt of proceedings of October 29, 1996.

h. City of Sumner v. Mike Wynn Sattler, Case No. C00010554. See Exhibit 8, transcribed excerpt of proceedings of October 29, 1996.

i. City of Orting v. Michael Brian Sita, Jr., Case No. 4605. See Exhibit 9, transcribed excerpt of proceedings of October 22, 1996.

j. City of Orting v. John David Powell, Case No. 6120. See Exhibit 10, transcribed excerpt of proceedings of August 27, 1996.

k. City of Sumner v. Lester Frank Leggitt, Case No. 13846. See Exhibit 11, transcribed excerpt of proceedings of June 11, 1996.

l. City of Sumner v. Jason Luddington, Case No. 16210. See Exhibit 12, transcribed excerpt of proceedings of June 11, 1996.

m. City of Sumner v. Matthew Clay Pankonin, Case Nos. 960036501 and C00010368 on or about February 23, 1996.

n. City of Sumner v. Eric John Wolf, Case No. 15112 on or about February 10, 1995, May 23, 1995, and November 27, 1995.

2. Respondent routinely has issued court orders to compel Spanish-speaking defendants to enroll in courses to learn English, to become citizens of the United States, or to leave the United States in a given period of time. Respondent does not have authority

to enter such orders. In addition, such orders are part of a pattern of undignified courtroom demeanor and demonstrate disrespect for defendants who appear before Respondent.

The following cases contain examples of such orders:

- a. City of Sumner v. Enrique Ceras-Campos, Case No. 960127601.
- b. City of Sumner v. Arcelio Aparicio-Zaldivar, Case No. C00010365.

See Exhibit 13, transcribed excerpt of proceedings of June 11, 1996.

- c. City of Sumner v. Ramon Perez-Cuiriz, Case No. C00010069. See

Exhibit 14, transcribed excerpt of proceedings of June 11, 1996.

- d. City of Sumner v. Francisco Valencia-Arias, Case No. C00010463.
- e. City of Sumner v. Armando Talavera-Aviles, Case No. C00010044.

3. Respondent has issued, or has stated that he may issue, other types of orders that are beyond Respondent's legal authority. These orders and statements are part of a pattern of disrespectful conduct. For example:

- a. City of Sumner v. Jason Allen Amburgy, Case No. C00010460.

In this matter, Respondent referred to court-ordered conditions such as "not being bored." Further, Respondent's lengthy discussion with Mr. Amburgy contains several inappropriate remarks. For example, after encouraging Mr. Amburgy, Respondent vaguely threatens him with the "crow bar hotel" for failing to comply, and indicates that Mr. Amburgy might "crack up" if indeed he follows the court's order to seek more volunteer activity. See Exhibit 15, transcribed excerpt of proceedings of November 12, 1996.

4. Respondent has made statements and issued orders that denigrate the position of individuals living together who are not married. This is part of a pattern of undignified courtroom behavior. Cases involving examples of these orders include the following:

- a. City of Sumner v. Jason Theodore Elliott, Case No. C00010705.

In this matter, Respondent threatened a court order to separate individuals living together, unmarried, where the defendant was charged with driving while license suspended. In addition, Respondent made several disparaging remarks about Mr. Elliott's relationship. Both the threatened order, which is outside Respondent's authority in the matter, and the remarks, served to demean the defendant. See Exhibit 16, transcribed excerpt of proceedings of October 22, 1996.

- b. City of Orting v. Michael Brian Sita, Jr., Case No. 4605.

In this matter, Respondent stated: "I suggest you get rid of her" in reference to defendant Mr. Sita's girlfriend, in addition to making other demeaning remarks about both individuals. See Exhibit 9, transcribed excerpt of proceedings of October 22, 1996.

- c. City of Sumner v. Gary Wayne Lester, Case No. 960163801.

Respondent's order that the defendant Mr. Lester separate from his girlfriend unless married was not within Respondent's authority and discriminated against unmarried couples, as Respondent's further comments regarding domestic violence implied. Mr. Lester was charged with disorderly conduct in this matter. See Exhibit 17, transcribed excerpt of proceedings of November 5, 1996.

- d. City of Sumner v. Jeramie T. Petroff, Case No. C00010269.

In this matter, Respondent contemplated an order to compel defendant Mr. Petroff's fiancé to sell her motor vehicle. Respondent's remarks served to demean the defendant. See Exhibit 18, transcribed excerpt of proceedings of November 26, 1996.

- e. City of Orting v. Shane Grady Cade, Case No. C00000275.

In this matter, following defendant Mr. Cade's plea of guilty to domestic

violence assault, Respondent issued an order to compel Mr. Cade and his fiancé, who owned a home together at the time, to separate until married. This was beyond Respondent's authority and served to demean the individuals before him.

B. Respondent has engaged in a pattern of conducting criminal proceedings in a manner that violates or impinges upon the fundamental procedural rights of criminal defendants. Respondent's conduct calls into question the integrity and impartiality of the office as well as Respondent's competence and faithfulness to the law. Such conduct includes, but is not limited to the following:

1. In accepting guilty pleas, Respondent failed to determine whether the guilty plea was knowingly, voluntarily and intelligently made, with an understanding of the nature of the charge and the consequences of the plea. Additionally, Respondent used a form Statement of Defendant on Plea of Guilty which violated due process and CrRLJ 4.2, which requires that written statements on Pleas of Guilty be in substantially the form as set forth in the rule. Such violations occurred in at least the following cases:

- a. City of Sumner v. Amburgy, C00010460;
- b. City of Orting v. Cebula, C00000189;
- c. City of Orting v. Deen, C00000280;
- d. City of Sumner v. Elliott, C00010705;
- e. City of Sumner v. Perez-Cuiriz, C00010069;
- f. City of Sumner v. Petroff, C00010269; and
- g. City of Sumner v. Potter, C00010615.

2. Respondent held trials in absentia contrary to law. For example:

- a. City of Sumner v. John Jay Potter, Case No. C00010615. See Exhibit 19, transcribed excerpt of proceedings of November 5, 1996.

- b. City of Sumner v. Erroll Joseph Cayald, Case No. C00010318. See Exhibit 20, transcribed excerpt of proceedings of June 11, 1996.
 - c. City of Sumner v. Kelly Robert Hoose, Case No. 960103701.
 - d. City of Sumner v. Gregory Dean Bridges, Case No. C00010738.
- C. Respondent's conduct has raised questions of the appearance of impropriety.
- 1. Aspects of Respondent's relationship with City of Orting Police Chief Emmons have been improper.
 - a. Respondent allowed Chief Emmons to act as an attorney for the City of Orting before the court even though Chief Emmons is not a licensed attorney. For example, Respondent has authorized Chief Emmons to negotiate, enter into, and submit plea agreements in criminal proceedings.
 - b. Immediately preceding a City of Orting calendar on August 27, 1996, Respondent asked Chief Emmons for a summary of the cases for the afternoon calendar. Respondent then proceeded to go to lunch with Chief Emmons immediately before the afternoon calendar. This ex parte contact with Chief Emmons, which immediately preceded City of Orting v. John Powell, raises questions about the appearance of fairness. See Exhibit 21, transcribed excerpt of off-the-record conversation, dated August 27, 1996.
 - 2. Respondent has arranged for his son, David C. Hammermaster, to act as a pro tem judge in his absence.
 - a. Such arrangement generates the appearance of impropriety due to their familial relationship and due to the fact that Respondent and his son practice law together at Hammermaster Law Offices. See Exhibit 22, transcribed excerpt of off the record conversation, dated October 29, 1996.
 - b. In addition, under this pro tem arrangement, defendants who file an

affidavit of prejudice against Respondent may have their cases heard by Respondent's son, and law associate, David C. Hammermaster.

For example, in the case City of Sumner v. Dina Doreen Buyak, Case No. C00010657, after Ms. Buyak filed an affidavit of prejudice against Respondent, David C. Hammermaster heard her case on September 24, 1996. See Exhibit 23, transcribed excerpt of off the record conversation, dated August 27, 1996.

III. BASIS FOR COMMISSION ACTION

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

CANON 1

Judges shall 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 high standards of judicial conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Comment

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

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 act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

CANON 3

Judge shall perform the duties of their office impartially and diligently.

The judicial duties of judges should take precedence over all other activities. Their judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

(A) Adjudicative Responsibilities.

(1) Judges should be faithful to the law and maintain professional competence in it. Judges should be unswayed by partisan interest, public clamor or fear of criticism.

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

(3) Judge 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.

Comment

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

(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 to a proceeding before them, by amicus curiae only, if they afford the parties reasonable opportunity to respond.

Comment

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude judges from consulting with other judges, or with court personnel whose function is to aid judges in carrying out their adjudicative responsibilities.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

(5) Judges shall perform judicial duties without bias or prejudice.

Comment

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the

judiciary into disrepute.

(B) Administrative Responsibilities.

(3) Judges should not make unnecessary appointments. They should exercise their power of appointment only on the basis of merit, avoiding nepotism and favoritism. They should not approve compensation of appointees beyond the fair value of services rendered.

Comment

Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

**IV. PROCEDURE FOR RESPONDENT TO ANSWER
AMENDED STATEMENT OF CHARGES**

In accordance with CJCRP 19(b), Respondent may file an answer to this Amended Statement of Charges by no later than May 8, 1998, and serve a copy on disciplinary counsel in this matter, Paul R. Taylor, 1000 Second Avenue, 38th Floor, Seattle, Washington 98104.

DATED this 22^d day of April, 1998.

COMMISSION ON JUDICIAL CONDUCT OF THE
STATE OF WASHINGTON

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