

1 It is uncontroverted that Respondent is now, and at all times material herein, the judge of the
2 Municipal Courts of Sumner, Orting and South Prairie. Respondent has been a judge of one or more
3 of these courts for thirty years.

4 1. Threats of life imprisonment or indefinite jail sentences.

5 a. Respondent had a pattern and practice of stating in court that it is within his
6 authority to hold defendants in jail indefinitely for failure to comply with fine payments or other orders
7 of the court. Furthermore, the respondent consistently threatened defendants with life sentences or
8 imprisonment until fines and costs were paid: "...then you're going to have to pay 40 dollars a day,
9 each day you're in jail, which means you'd be in jail the rest of your life because every week you'd owe
10 another 300, every month you'd owe another roughly 1200, every year you'd owe roughly another 15
11 thousand" (See City of Sumner v. Daniel Jay Link, Case No. 15779, transcribed excerpt at page 2,
12 Commission exhibit). Additional examples of such orders or statement include the transcribed excerpt
13 of proceedings in the following cases which have been admitted as stipulated Commission exhibits
14 herein: Sumner v. Scott Reisenauer, Case No. 13361; City of Orting v. David Alan Deen, Case No.
15 C00000280; Orting v. Richard Norbert Cebula, Case No. 00000189; Sumner v. Enrique Ceras-Campos,
16 Case No. C100010522; City of South Prairie v. Clifford Raymond Batten, Case No. C00058228;
17 Sumner v. Tracy Stewart Lybeck, Case No. 18523; Sumner v. Mike Wynn Sattler, Case No.
18 C00010554; Orting v. Michael Brian Sita, Jr., Case No. 4605; Orting v. John David Powell, Case No.
19 6120; Sumner v. Lester Frank Leggitt, Case No. 13846; and Sumner v. Jason Luddington, Case No.
20 16210.

21 b. On direct examination the respondent admitted that the law does not allow life
22 imprisonment for failure to pay fines and that he has no authority to sentence to life imprisonment under
23 any conditions in municipal court (Transcript of Proceedings at page 60-61). He further admitted that
24 he did not know if a fact-finding hearing was required on the issue of ability to pay before imposing
25 sanctions on delinquent defendants (*Id.* at 61). When Respondent was asked if he thinks there are any
26 limits on what he can say to get a defendant to pay a fine, he responded: "I don't know that I've even
27 thought about that question, sir." (*Id.* at 53) When asked "Do you believe you can impose any

1 condition you want?" Respondent answered, "I don't think so, but I don't know where the limitations
2 are. I don't know that I've ever thought about that." (*Id.* at 93-94)

3 c. Respondent's speech in the cases cited above constitutes a pattern of
4 disrespectful and undignified conduct. The following examples are typical of the courtroom dialogue.
5 "Then any reason why I should even be talking to you?" (Link and Reisenauer, and similar language
6 in Batten, Sattler, Powell, Leggitt, Luddington and Sita, *supra.*) "Well, is that what the answer is, that
7 you should stay in jail indefinitely?" (Deen and similar language in Lybeck, Powell and Sita, *supra.*)
8 "...but you don't stick your head in the sand unless that's your choice and, if so, then when you do come
9 back before me I will ask you the question should I kick it further in. Should I even talk to you, and
10 I don't know what your answer to that question will be; hopefully it will be yes, let me spend the rest
11 of my life in jail, which seems kind of stupid for a 400 dollar fine, or 350 plus 50 dollars in costs. It
12 seems stupid that somebody would want to spend the rest of their life in jail for that piddley amount of
13 money..." (Cebula, *supra*) "...that probably means a life sentence for a lousy \$350 fine. That's what
14 contempt of court means, sir." (Leggitt, *supra.*)

15 2. Spanish-speaking Defendants and Orders Exceeding Lawful Authority

16 The Respondent has a pattern and practice of issuing orders to compel Spanish-speaking
17 defendants to enroll in courses to learn English, and to become "legal" or leave the United States in a
18 given period of time. See the transcribed excerpt of proceedings in City of Sumner v. Enrique Ceras-
19 Campos, Case No. 960127601 and City of Sumner v. Acelio Aparicio-Zaldivar, Case No. C00010365,
20 and Commission Exhibits 5 through 16.

21 3. Pattern of Undignified and Disrespectful Conduct and Orders Exceeding Lawful
22 Authority

23 a. In the City of Sumner v. Jason Allen Amburgy, Case No. C00010460 (*supra*),
24 the defendant spent 90 days in Western State Hospital, was released October 31, 1996 and appeared
25 before Respondent on November 12, 1996. Notwithstanding defendant's mental condition, Respondent
26 ordered the defendant to "stop being bored" and threatened him with the "crow bar hotel." Respondent
27 referred to defendant's condition as follows: "It sounds to me like a bunch of pity pot, feeling sorry for

1 yourself, which as far as I'm concerned is a bunch of garbage."

2 b. In City of Sumner v. Jason Theodore Elliot, Case No. C00010705 (*supra*),
3 Respondent threatened to order the defendant to stop living with his girlfriend when he was charged
4 with driving while license suspended. At one point Respondent stated: "...so you're going to end up
5 in jail because of this woman? And her kids?" At another point Respondent characterized defendant's
6 actions as "stupid" and "dumb."

7 c. In the Sita case, *supra*, Respondent stated: "I'd suggest you get rid of her" in
8 reference to the defendant's girlfriend, in addition to other demeaning remarks about both individuals.

9 d. In City of Sumner v. Jeramie T. Petroff, Case No. C00010269 (*supra*), on
10 November 26, 1996, Respondent either ordered or threatened to order that the defendant's fiancée's
11 vehicle be sold if it was not licensed and insured by the end of the year.

12 See State v. Summers, 60 Wn.2d 702 (1962) for a summary of the court's authority to
13 impose conditions of sentence.

14 4. Guilty Pleas

15 In accepting guilty pleas, Respondent had a pattern and practice of failing to first determine
16 whether the guilty plea by defendants were knowingly, voluntarily and intelligently made, and with an
17 understanding of the nature of the charge and the consequences of the plea. Additionally, Respondent
18 failed to comply either orally or in writing with CrRLJ 4.2, which requires that written statements on
19 Plea of Guilty be in substantially the form as set forth in the rule. See also Commission Exhibit 3,
20 written guilty plea statements on forms used in Sumner and Orting Municipal Courts by the
21 Respondent.

22 The Respondent acknowledged that he did not understand the explanation of the elements of
23 the offense to be a requirement of accepting a guilty plea (Transcript of Proceedings at page 28). He
24 further acknowledged that he did not understand his responsibility to explain the maximum and
25 minimum sentences to be a requirement for accepting the guilty plea (*Id.* at 30). Each of these
26 requirements has long been well established as constitutionally required by the courts and has been
27 codified by the Washington State Supreme Court in CrRLJ 4.2.

1 For examples, see Amburgy, Cebula, Deen, Elliot, Perez-Cuiriz, Petroff and Potter, supra.

2 5. In Absentia Trials

3 Respondent admits that he holds trials without the defendant being present. For examples, see
4 Potter and Cayald, supra, and Hearing Exhibit 4. Respondent believes he is legally authorized to do
5 so and premises this action primarily on the Statement of Defendant on Plea of Not Guilty form that
6 the defendant is required to sign at arraignment. The pertinent language of the form follows: "If I am
7 not in attendance at the time of trial, including the commencement thereof, it is because I have
8 deliberately and intentionally refused to be present, and under such circumstances request that I be
9 deemed 'excused' by the court pursuant to CrRLJ 3.4." See Commission Exhibit 2 for examples. This
10 contingent waiver and procedure circumvents a basic due process right and further demonstrates
11 Respondent's profound misunderstanding of his responsibility as a judge.

12 See also State v. Hammond, 121 Wn.2d 787 (1993) and State v. Jackson, 124 W.2d 359 (1994)
13 for a summary of the law in Washington.

14 6. Son as Pro Tem

15 Respondent's son serves as municipal court judge pro tem on occasion in the same court as
16 respondent. Other lawyers also serve as pro tem judges in these same courts. Respondent's son serves
17 in such capacity without pay. The initial inquiry as to Respondent's son's availability and willingness
18 to serve as judge pro tem came from a city representative. Respondent's son was appointed judge pro
19 tem by the mayor pursuant to state statute. There is no pattern of either the Respondent or the court
20 clerk intentionally scheduling cases, where an affidavit of prejudice has been filed against Respondent,
21 to be heard by Respondent's son.

22 **CONCLUSIONS**

23 Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

24 1. With respect to Finding No. 1a and b, Respondent's threats of life imprisonment and
25 indefinite jail sentences constituted a failure to respect and comply with the law in a manner that
26 promotes public confidence in the integrity of the judiciary, and further constitutes a failure to be faithful
27 to the law and maintain professional competence in it, thereby violating the Code of Judicial Conduct,

28 **COMMISSION DECISION - 5**

000201

1 Canons 2(A) and 3(A)(1). With respect to Finding No. 1c, Respondent's speech constituted a pattern
2 and practice of discourteous and undignified conduct in violation of the Code of Judicial Conduct,
3 Canon 3(A)(3).

4 2. With respect to Finding No. 2, although Respondent's authority to order persons to
5 leave the country was questionable, such sentencing condition was an alternative to other lawfully
6 required conditions. Furthermore, Respondent's authority to order persons to leave the country is an
7 issue of law which has been the subject of federal litigation in recent years. See Respondent's Exhibits
8 R, S and T for examples. The ambiguity of circumstances considered with the issue of law in this
9 instance do not permit a conclusion that any violation of the Code of Judicial Conduct occurred by
10 clear, cogent and convincing evidence.

11 3. With respect to Finding No. 3a through d, Respondent's conduct constitutes a pattern
12 and practice of undignified and disrespectful conduct in violation of the Code of Judicial Conduct,
13 Canon 3(A)(3). Furthermore, Finding No. 3d constitutes a violation of Canons 2(A) and 3(A)(1) in that
14 Respondent's order or threat to order a vehicle belonging to a party not subject to the court's
15 jurisdiction to be sold was without any lawful authority and demonstrates his failure to respect and
16 comply with the law and maintain competence in it.

17 4. With respect to Finding No. 4, Respondent violated the Code of Judicial Conduct,
18 Canon 3(A)(1). Respondent's method of accepting guilty pleas shows a pattern and practice of
19 violating the fundamental procedural rights of criminal defendants and also demonstrates inadequate
20 competence in an important area of law which routinely comes before him.

21 5. With respect to Finding No. 5, Respondent violated the Code of Judicial Conduct,
22 Canon 3(A)(1). Respondent's method of conducting trials without the defendant's presence shows a
23 pattern and practice of violating the fundamental procedural rights of criminal defendants and
24 inadequate competence in a fundamental area of law which routinely comes before him.

25 6. For the reasons stated in Finding No. 6, the Commission finds no violation of the Code
26 of Judicial Conduct therein regarding Respondent's son's service as judge pro tem.

1 **AGGRAVATING FACTORS**

2 1. All of the violations found herein constitute long term patterns of conduct.

3 2. The nature, extent and frequency of the conduct are serious. Threats of life
4 imprisonment, improper guilty pleas and trials in absentia involve a violation of fundamental rights and
5 issues of basic fairness of constitutional dimension. These violations involve great numbers of people
6 on a regular basis who are seldom represented by counsel. The consequences to such people can be
7 severe.

8 3. All misconduct addressed herein occurred in the courtroom.

9 4. Similarly, all misconduct occurred in the Respondent's official capacity as municipal
10 court judge.

11 5. Although Respondent acknowledges the facts constituting the violations, he does not
12 recognize that they constitute violations of the Code of Judicial Conduct.

13 6. Respondent has made no significant efforts to change or modify his behavior toward
14 litigants. This is the result of his failure to recognize the behavior as misconduct.

15 7. Respondent's misconduct affects the integrity of the judiciary and undermines public
16 respect and confidence in the administration of justice.

17 **MITIGATING FACTORS**

18 1. Respondent has indicated his willingness to change, if so directed. With respect to the
19 issue of in absentia trials, respondent stated, "If I'm wrong, I'm willing to stand corrected." Regarding
20 the guilty plea issues, he said "I'm willing to change if I'm wrong."

21 2. Respondent has served thirty years on the bench and there has been no prior disciplinary
22 action concerning the Respondent.

23 3. Respondent did not exploit his judicial position to satisfy personal desires.

24 4. Respondent cooperated fully with the Commission investigation and proceeding.

25 **ORDER AND RECOMMENDATION**

26 Based upon the foregoing Findings of Fact, Conclusions and Aggravating and Mitigating
27 Factors, the Commission finds that the respondent violated Canons 2(A), 3(A)(1) and 3(A)(3) of the

1 Code of Judicial Conduct and hereby CENSURES Respondent and recommends and orders as follows:

2 1. The Commission recommends to the Washington State Supreme Court that the
3 Respondent be suspended from office for 30 days without pay.

4 2. The Commission orders Respondent to take the following corrective action:

5 a. To complete judicial education courses in criminal procedure, ethics and
6 diversity. Said courses shall be approved in advance by the Commission.

7 b. To meet with a judicial mentor approved by the Commission in a manner
8 prescribed by the Commission.

9 c. The above corrective action shall be at the Respondent's expense.

10 3. It is further ordered that Respondent's judicial conduct shall be monitored in a manner
11 prescribed by the Commission for a period of two (2) years.

12 DATED this 7 day of August, 1998.

13 COMMISSION ON JUDICIAL CONDUCT

14 
15 Dale Brighton


16 Connie Michener

17 
18 Vivian Caver

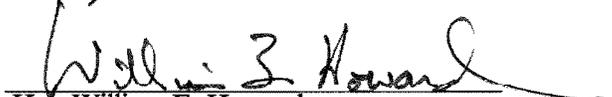
19 See attached Dissent
20 Hon. John A. Schultheis

21 
22 Gregory R. Dallaire


23 K. Collins Sprague

24 
25 Hon. David S. Edwards


26 Todd Whitrock

27 
28 Hon. William E. Howard