BEFORE THE COMMISSION ON JUDICIAL CONDUCT

FOR THE STATE OF WASHINGTON

FILED
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COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of The Honorable A'lan S. Hutchinson Pierce County District Court No. Three 201 Center Street West Eatonville, Washington 98328	No. 96-2405-F-65 COMMISSION DECISION

Following the filing of a Statement of Charges alleging that Judge A'lan S. Hutchinson violated the Code of Judicial Conduct, the Commission held a fact-finding hearing on December 4, 1997, in Sea-Tac. Members of the Commission present as fact-finders were Dale Brighton, Honorable H. Joseph Coleman (presiding), Gregory R. Dallaire, Honorable David S. Edwards, Judie Fortier, Honorable William E. Howard, Margo T. Keller, Connie Michener, K. Collins Sprague, and Todd K. Whitrock.

Judge A'lan S. Hutchinson (Respondent) was present and represented by his attorney, W. Theodore Vander Wel of Vander Wel & Jacobson, PLLC. Disciplinary counsels were David D. Hoff and Diana M. Dearmin of Graham & James LLP/Riddell Williams P.S.

The Commission has carefully considered the testimony of the witnesses, the exhibits admitted, and arguments and briefs of counsel. The Commission finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

1. The Honorable A'lan S. Hutchinson (Respondent) is now and has been at all times referenced herein, a judge of Pierce County District Court No. Three, a part-time, elected position. He maintains a part-time law practice.

2. On December 6, 1996, Respondent appeared in Pierce County Superior Court regarding an arraignment and bail hearing in State v. Owen Adolphus Barnes, Cause No. 96-1-04462-0. The defendant, a former pastor of the First Congregational Church in Roy, Washington, was charged with two counts of child molestation in the first degree.

3. Prior to the arraignment, the press reported about the charges against defendant Barnes. A number of persons interested in the case were present in the courtroom, including members of the community and family and friends of the victim and the defendant. The media, including television, covered the proceeding.

4. The deputy prosecuting attorney presented the State's position on bail, then introduced Respondent:

> JUDGE: Okay. What is the state's position in view of those facts with respect to release or bail?
> DEPUTY PA: Your Honor, the state is asking for bail in the amount of $50,000 and a strict no-contact with the victim or minor children based on the defendant's admissions to prior sexual activity and the present charges.
> . . . .
>
> DEPUTY PA: Your Honor, I would also point out that Judge A'lan Hutchinson is present from District Court 3. I believe he's here on behalf of the defense. He's present in the courtroom, and he may wish to address the Court as well.

Transcript of the Record of Proceedings of the Arraignment ("Transcript") at pp. 5-6.

5. Defendant Barnes' attorney presented the defendant's position on bail. Respondent then addressed the court as follows:

> JUDGE: Okay. Does someone else wish to be heard?
> MR. HUTCHINSON: Only as a neighbor, Your Honor.
> JUDGE: All right, Mr. Hutchinson.
> MR. HUTCHINSON: I appreciate the opportunity to speak. The reason I'm here is I feel that I should be.[1] I've attended Reverend Barnes's church on occasion, and I've had a necessity to contact him for spiritual assistance, and he gave it to me free and voluntarily several times. And I think it's only right that I should attempt to reciprocate a

[1] Disciplinary counsel has stipulated the Respondent said "should" rather than "should be".

little bit here today. There are other people here who feel the same way. When I needed spiritual help, he never put any conditions on it, but he gave it freely and voluntarily.

There are people who would be willing to help him post some bail. If this Court would consider think – I think the federal option or even the option in this Court of 10 percent in lieu of that, that we might be – we would be willing to put up the cash. So rather than, say, a bond, if the Court would consider 10 percent cash, I think maybe these people will help him out.

JUDGE: All right. Does the defense –

MR. HUTCHINSON: And I'll say this. As far as his moving, of course, he's lost his position there at this church, and it was out of necessity, and he has about two month's income. He will be getting a veterans pension in May. He's put in what? – eighteen years in the service? Something like that. So he's stable as far as responding to the Court.

Transcript, pp. 7-8.

6. Respondent presented evidence that he attended the proceeding as an attorney for his friend, Oscar Berggren, who had requested him to address the court on the issue of bail. Oscar Berggren, as a non-lawyer, did not believe that he could make such a presentation himself.

7. To avoid any misunderstanding, a part-time judge appearing as a lawyer in judicial proceedings has an affirmative responsibility to clearly identify his or her representative role, which Respondent failed to do. This matter would never have come before the Commission had the respondent properly identified himself as an attorney who was representing a client. So long as Respondent continues to practice law while serving as a part-time judge, he is advised to clearly delineate his role when appearing as a lawyer. But for purposes of determining whether a violation of the Code of Judicial Conduct occurred, it was not established by clear, cogent, and convincing evidence that Respondent spoke in a judicial capacity. Further, the following findings are critical:

(a) Respondent was not aware that the deputy prosecuting attorney would refer to him as "Judge Hutchinson;" and

(b) Respondent did not directly or indirectly refer to himself as a judge.

Having made its Findings of Fact, the Commission now makes the following:

CONCLUSIONS

1. As a part-time judge, Respondent can represent clients as an attorney under the Code of Judicial Conduct (Code).[2] The relevant provision creates a potential for confusion and public misperception whenever a part-time judge appears in judicial proceedings in a non-judicial role.

2. It has not been established by clear, cogent, and convincing evidence that Respondent lent the prestige of judicial office to advance the private interests of himself or others or that he conveyed or permitted others to convey the impression that he was in a special position to influence them.

3. It has not been established by clear, cogent, and convincing evidence that Respondent presented himself as a judge voluntarily testifying as a character witness at the arraignment and bail hearing of Owen Barnes.

4. Since it was not established by clear, cogent, and convincing evidence that Respondent acted in violation of the Code of Judicial Conduct at the arraignment and bail hearing, there is no clear, cogent, and convincing evidence that he violated Canon 1, 2(A) or 2(B) of the Code of Judicial Conduct as charged.

From these Conclusions, the Commission enters this

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[2] Canon 5(F) provides: "Judges shall not practice law. Notwithstanding this prohibition, judges may act pro se and may, without compensation, give legal advice to and draft or review documents for members of their families." Part-time judges are not subject to Canon 5(F) of the Code. "Application of the Code of Judicial Conduct," section (A)(1)(a).

ORDER

The Statement of Charges filed against the Honorable A'lan Hutchinson is dismissed.

DATED this 11th day of February, 1998.

COMMISSION ON JUDICIAL CONDUCT

DALE BRIGHTON

HON. WILLIAM E. HOWARD

HON. H. JOSEPH COLEMAN

MARGO T. KELLER

GREGORY R. DALLAIRE

CONNIE MICHENER

HON. DAVID S. EDWARDS

See attached Concurring Opinion
K. COLLINS SPRAGUE

JUDIE FORTIER

TODD K. WHITROCK