

ORIGINAL

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In Re the Matter of:)
)
The Honorable Albert M. Raines) No. 98-2810-f-72
Des Moines Municipal Court)
21630 11th Avenue South) ANSWER TO STATEMENT OF
Des Moines, WA 98198-6317) CHARGES

COMES NOW the Honorable Albert M. Raines, Judge of Des Moines Municipal Court and in Answer to the Commission's Statement of Charges, hereby answers as follows:

I. In answer to this paragraph the Honorable Albert M. Raines (Respondent herein) admits that at all times discussed herein he was a Judge with the Des Moines Municipal Court, Des Moines, Washington.

II. In answer to subparagraph 1, Respondent admits same. In answer to subparagraphs 2 and 3, the Respondent admits only that he passed a note to an attorney during a busy court session. The Respondent and the attorney had been good friends for many years and the Respondent only meant the note as a joke. The passing of the note was not witnessed by any members of the public and only by one member of the Court's staff. Any other different or other allegations contained in said paragraphs are specifically denied.

III. In answer to subparagraphs 1, 2 and 3, the Respondent denies same.

The addendum below regarding the Respondent's factual assertions is incorporated by reference herein.

ANSWER TO STATEMENT OF CHARGES - 1

RECEIVED

AUG 09 1999

STAFFORD FREY COOPER
PROFESSIONAL CORPORATION

ATTORNEYS

2500 RAINIER TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2621
TELEPHONE (206) 623-9900
FACSIMILE (206) 624-6885

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FACTUAL SUMMARY ADDENDUM TO ANSWER TO COMMISSION

1. **SUMMARY OF POSITION**

On June 10, 1998, Ms. Ha Dao, an assistant city attorney for the City of Des Moines, passed a note to Judge Raines requesting a recess on a very busy and hectic day. At this time, Judge Raines had known Ms. Dao socially for a number of years and considered her a good friend. Although Judge Raines granted the recess, he drew a character giving "the finger" on the note and passed it back to Ms. Dao as a joke between friends. Ms. Dao was understandably offended and complained to the Des Moines city manager and the Des Moines city attorney about the note. When they brought the matter to Judge Raines' attention, he understood that the note was inappropriate (regardless of his longstanding friendship with Ms. Dao) and personally apologized to Ms. Dao, assuring her that it would not happen again.

Judge Raines has been a lawyer for 14 years and a judge for 7 years. This is the first complaint that has been lodged against him. The passing of the note was an isolated incident of poor judgment that Judge Raines has not repeated, and will not repeat. This is the third time that the passing of the note has been the subject of a formal complaint (as explained below, the first and second complaints were by Ms. Dao to the City or to an independent investigator). Under the standard set forth in Discipline of Ritchie, 123 Wn.2d 725, 870 P.2d 967 (1994), we ask that the Commission conclude that the passing of the inappropriate note was an isolated incidence of poor judgment, and that the matter was properly concluded with a personal apology to Ms. Dao.

2. **BACKGROUND REGARDING JUDGE RAINES**

Judge Raines graduated from law school in 1985. From 1985 to 1992, Judge Raines served first as a deputy prosecutor, an assistant city attorney, and a law firm associate. Since 1992, Judge Raines has served as an administrative law judge and a municipal court judge. He has been active in many bar associations and community projects. A copy of Judge Raines' curriculum vitae is attached. This complaint is the only complaint that Judge Raines has received in his fourteen years as a lawyer and seven years as a judge.

3. **MS. DAO'S FORMAL COMPLAINTS REGARDING THE NOTE**

A. **First Complaint**

Ha Dao is the former assistant city attorney for the City of Des Moines whose responsibilities included prosecuting misdemeanors. She also sought the Des Moines municipal court judgeship to which Judge Raines received the appointment. Judge Raines

ANSWER TO STATEMENT OF CHARGES - 2

STAFFORD FREY COOPER
PROFESSIONAL CORPORATION
ATTORNEYS
2500 RAINIER TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2621
TELEPHONE (206) 623-9900
FACSIMILE (206) 624-6885

1 and Ms. Dao had known each other for ten years (they were colleagues at the Seattle City
2 Attorney's office), and Judge Raines considered Ms. Dao to be one of his good friends. On
3 June 10, 1998, during a very hectic calendar, Ms. Dao passed a written note to Judge
4 Raines requesting a recess. In response, Judge Raines granted the request, but jokingly
5 drew a cartoon character giving "the finger" with the response "no" in a conversation
6 balloon and a "happy face." Judge Raines then asked that the note be passed back to Ms.
7 Dao.

8 On Friday, June 12, 1998, Ms. Dao complained to the City Manager, Bob Olander,
9 and the City Attorney, Gary McLean, regarding the note. When they confronted Judge
10 Raines, he wholeheartedly agreed with them that passing the note to Ms. Dao was
11 inappropriate and an exercise of poor judgment. On June 17, 1998, Judge Raines met
12 privately with Ms. Dao, apologized to her for the note, and informed her that it would not
13 happen again.

14 B. Second Complaint

15 Shortly after learning that she may be subject to discipline for communicating
16 confidential information to opposing counsel in a case against the City of Des Moines, Ms.
17 Dao filed an internal complaint against a city official and Judge Raines. The City appointed
18 Betsy Maurer, an attorney with the law firm of Sebris Busto, as an independent investigator.
19 First, she again complained that Judge Raines had passed her a note with a sketch of a
20 character giving "the finger" in response to her request for a recess. Second, she
21 complained that Judge Raines had grabbed his judge's robe before court one day and
22 joked that he needed "to get dressed now."

23 At the conclusion of her investigation, Ms. Maurer found that Ms. Dao's
24 communication of confidential information raised concerns as to her professional ethics,
25 loyalty, and judgment. With regard to Ms. Dao's complaints against Judge Raines, Ms.
26 Maurer investigated and concluded as follows:

- Judge Raines and Ms. Dao knew each other personally through a mutual friend, and believed that they had also become good friends. Ms. Dao admitted to Ms. Maurer that it was reasonable for Judge Raines to believe that they had become friends. Judge Raines agreed that the note was inappropriate regardless of his friendship with Ms. Dao and his perception of her sense of humor.
- The calendar was very busy and hectic on June 10, 1998, the day that the note was passed. Judge Raines passed the note to Ms. Dao as a joke. Despite the note, Judge Raines granted Ms. Dao's request for a recess.
- In response to Ms. Dao's complaint to the City Manager and City Attorney on June 12, 1998, Judge Raines met privately with Ms. Dao, apologized to her for the note, and informed her that it would not happen again.

ANSWER TO STATEMENT OF CHARGES - 3

STAFFORD FREY COOPER
PROFESSIONAL CORPORATION

ATTORNEYS

2500 RAINIER TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2621
TELEPHONE (206) 623-9900
FACSIMILE (206) 624-6885

1 With regard to the "getting dressed" comment, Judge Raines explained that judges
2 often describe putting on their robes as "getting dressed." One day before Court, Judge
3 Raines grabbed his robe from Ms. Dao's office (stored in there because the City had not
4 provided him with office space) and commented to Ms. Dao that he had "gotta get
5 dressed." Judge Raines had not received any complaint about this comment until after Ms.
6 Dao was interviewed by Ms. Maurer. Excerpts from Ms. Maurer's report regarding Ms.
7 Dao's allegations against Judge Raines are attached for the Commission's review.

8 After the apology, Judge Raines continued to work with Ms. Dao without further
9 incident.

10 4. STANDARD FOR SANCTION

11 In *Discipline of Ritchie*, 123 Wn.2d 725, 731, 870 P.2d 967 (1994), the Court set
12 forth the criteria for assessing whether a disciplinary sanction is warranted. An application
13 of such criteria demonstrates that no formal sanction is warranted here.

- 14 • Judge Raines has served as a judge for seven years with no prior complaints of
15 inappropriate conduct.
- 16 • The passing of the note represents an isolated incident of poor judgment.
- 17 • When first confronted seven months ago, Judge Raines immediately acknowledged that
18 the passing of the note was inappropriate and uncalled for, and personally apologized to
19 Ms. Dao for the note.
- 20 • Judge Raines assured Ms. Dao that he would not repeat the isolated incident of poor
21 judgment, and has not repeated it.
- 22 • Judge Raines passed the note on a very busy and hectic day to an attorney who Judge
23 Raines believed was a good friend who would consider the note a joke.
- 24 • No inappropriate behavior was exhibited to the public, as Judge Raines granted Ms.
25 Dao's request for a recess, and then passed the note to Ms. Dao privately by way of the
26 court administrator, who was serving as in-court clerk that day.

IV. The Respondent further asserts the following Affirmative Defenses:

1. Lack of jurisdiction over the subject matter;
2. Lack of jurisdiction over the person;
3. Improper venue;
4. Insufficiency of process;
5. Insufficiency of service of process;
6. Failure to state a claim upon which relief may be granted; and
7. Failure to join a party under Rule 19.

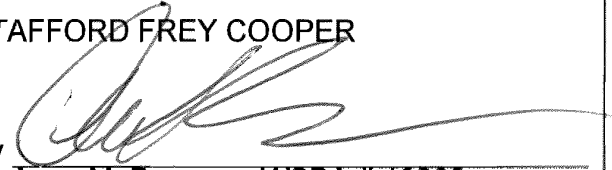
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Respondent reserves the right to supplement this Answer.

Respectfully submitted,

DATED this 6th day of August, 1999.

STAFFORD FREY COOPER

By 

Anne M. Bremner, WSBA # 13269
On Behalf of Judge Albert M. Raines