

**BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON**

In Re the Matter of)	
)	
Honorable Albert M. Raines, Judge)	No. 98-2810-F-72
Des Moines Municipal Court)	
21630 11 th Avenue S.)	CONCURRING DECISION
Des Moines, WA 98198-6317)	
_____)	

Several aspects of this case troubled me, although not directly related to the Commission's determination of this case. In spite of the extensive fact-finding hearing, the material facts, in my view, have never been disputed, including the justified reaction of Ms. Ha Dao, the complaining witness, to Judge Raines' offensive note.

"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 long standing friendship with Ms. Dao) and personally apologized to Ms. Dao, assuring her that it would not happen again."

Judge Raines' Answer to Statement of Charges, Page 2, Lines 7-10.

"All witnesses described Ms. Dao as being either "upset" or "very upset" at the time. Ms. Sheckler characterized Ms. Dao's reaction as, "How can I face this man in court when he's been this disrespectful?"

Judge Raines' Answer to Statement of Charges, Page 2 of Attachments (Excerpt from report of city appointed investigator).

At the commencement of the hearing, the Commission accepted the stipulation of Judge Raines and Commission Counsel that this was "an isolated incident" and that "Judge Raines' character was not an issue." Yet Judge Raines called *nine* witnesses before the Commission testifying to his excellent reputation in the legal community for "professionalism, integrity, and non-discriminatory conduct." These matters were never

placed in dispute by the Statement of Charges or by any other action of the Commission.

Judge Raines attempted to make the character of Ms. Dao an issue, calling upon his friends to relate specific instances of her past conduct, most eight to ten years in the past, having little, if anything, to do with the substance of the complaint before the Commission.

Finally, Judge Raines did not comply with the rules of procedure governing Commission hearings. Commission on Judicial Conduct Rules of Procedure 22 provides in relevant part:

Upon written demand after the time for filing an answer has expired, the commission and respondent will each disclose within fourteen days thereof...the following:

- (A) Names and addresses of all witnesses whose testimony that party expects to offer at the hearing;
- (B) A brief summary of the expected testimony of each witness;...

Judge Raines filed his answer August 6, 1999. Counsel for the Commission served his request for discovery August 13, 1999. Judge Raines did not provide a list of witnesses until October 7, 1999, well beyond the time for compliance. The tardy list of sixteen witnesses, later supplemented by an additional list of six more witnesses, did not include the required "brief summary of the expected testimony" of *any* of the twenty-two witnesses, let alone provide sufficient time to contact and interview each prior to the hearing date. This tactic put Commission counsel at an extreme disadvantage.

Those issues aside, the question presented by this case is whether to impose discipline and if so, to what degree, for the conduct complained of and to which both sides agree occurred. Prior to the Supreme Court's decision *In re Blauvelt*, 115 Wn.2d

735, 801 P.2d 235 (1990) it was not at all clear whether the commission could find a violation of the Code of Judicial Conduct without imposing some form of discipline.

Upon the completion of the hearing or hearings, the commission in open session shall either dismiss the case, or shall admonish, reprimand, or censure the judge or justice, or shall censure the judge or justice and recommend to the supreme court the suspension or removal of the judge or justice, or shall recommend to the supreme court the retirement of the judge or justice.

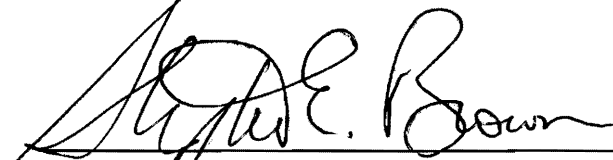
Const. Art. 4, § 31. The Supreme Court held in *Blauvelt* that in some cases of ethical violations no discipline may be the appropriate resolution. "Neither the constitution nor the rules require the imposition of a sanction if this court determines that such sanction is not warranted." *Blauvelt*, at 774. This was incorporated into the Supreme Court's October 9, 1995 revision of the Code of Judicial Conduct. The Preamble to the Code of Judicial Conduct now includes the following:

The test of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether the activity was inadvertent, unintentional or based on a reasonable but mistaken interpretation of obligations under the Code, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

Judge Raines is by all accounts a good and fair judge. Isolated incidents of bad judgment by a single judge can and do often result in damage to the integrity of the judiciary as a whole. Ms. Dao was clearly justified in reporting this matter to the Commission. Judge Raines would do well to remember that everything he does as a judge in his courtroom, regardless of his intentions, might become subject to public scrutiny. Sending a patently offensive note to an attorney who appears regularly in his

court is one of those things. However, an isolated incident of bad judgment by a judge whose character and other actions are not otherwise at issue, is a transgression that should not be subject to discipline.

I concur in the decision of the Commission.



Stephen E. Brown