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

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

I concur with the Findings of Fact and Conclusions that Respondent violated Canons 1, 2(A), 3(A)(2) and 3(A)(3). However, I feel compelled by the publicity this matter has engendered to expound upon Judge Brown's concurring opinion and to clarify my reasoning.

Respondent's case concentrated on refuting the proposition that his behavior was discriminatory, even though no such allegation had been raised. The defense endeavored to project this (non-existent) accusation onto Complainant by positing that she had engaged in unethical behavior and that she harbored racist sentiments. It further portrayed her as having a crass sense of humor. This matter did not involve harassment, discrimination, or any other sort of claim that frequently elicits an aggressive defense posture. Respondent's specious defense belied his excellent reputation. Moreover, his case missed the basis of the complaint entirely.

A tactful argument made by the defense was that Respondent and Complainant were friends and, based upon the combination of their friendship and her sense of

humor, she should not have been offended by the note. Many witnesses appearing for the defense affirmed that Respondent and Complainant had once been friends. Some reflected specifically upon Complainant's "off-color humor." It is more pertinent, though, that none of them corroborated Respondent's testimonial that he and Complainant had "joked all of the time" while both of them were employed by the City of Des Moines. Complainant maintained that no such friendship existed at that time.

If Respondent and Complainant were indeed friends, a logical inquiry would have examined Complainant's reason for filing a complaint. That explains why the defense offered an ulterior motive: Complainant was envious that Respondent had been awarded a judicial position she had sought. This attempt to establish a motive failed for lack of substantiation.

The defense also questioned Complainant's credibility, disputing her claim that the note incident was a "major factor" in her decision to leave her employment at the City of Des Moines. Respondent's case suggested, without the support of any evidence, that Complainant merely endeavored to avoid an investigative finding that she had violated ethical standards. Messrs. Olander and Piasecki proffered an alternative rationale; they identified a problem between Complainant and her immediate supervisor. No one refuted the viability of this other justification.

The only germane issues concern whether the conveyance of the note by Respondent to the Complainant was inappropriate and whether the dignity and integrity of the judicial system were compromised by the public nature of the note. Questions about the relationship between Respondent and Complainant and the attributes of the

Complainant's sense of humor were superfluous.

Respondent admitted that he was "responsible" for the note and that it was "inappropriate," as did virtually every witness attesting to his good character. Yet he insisted that his behavior was "private." His conduct occurred on the bench while court was in open session. That point is irrefutable. Mingling a private activity with judicial functions, whether the act transpired inside or outside of the courtroom, is not private, especially when misconduct is involved. (See discussion from In re: Ritchie, Cause No. 91-1110-F-33.) Respondent testified that he had intended the note to be private. He folded the note and gave it to the court clerk for delivery to Complainant. He may not have expected or wanted the clerk to read it (since the note had originated with her, it does not seem unreasonable that she would examine it). The clerk may not have understood Respondent's intentions, but she read the note, nevertheless. That's a fact. The incident was public.

Respondent conceded that he had "made a bad call," misjudging how Complainant might react when he relayed the note to her. Bad judgment was exercised through more than the content of the note; Respondent chose the wrong place, time, and means to convey a joke. His conduct disturbed an attorney appearing before his court and, in this instance, that attorney reported to the same superior as Respondent did. Respondent acknowledged these facts. Furthermore, Mr. Olander independently confirmed that Complainant had been made upset by Respondent's note. The fact that Respondent had engaged in a behavior that adversely affected Complainant is incontrovertible.

Evidence presented at the hearing was sufficient to find a violation of the Code of Judicial Conduct by clear, cogent and convincing standard of proof, as required under Rule 7 of the Commission on Judicial Conduct Rules of Procedure (CJCRP).

Furthermore, as Judge Brown explained in his concurring opinion, Respondent violated CJCRP 22 by failing to disclose information within fourteen days of being served with a demand by disciplinary counsel. This fact warrants illustration. Respondent filed his Answer to the Statement of Charges on August 6, 1999. Disciplinary counsel issued a request under CJCRP 22 on August 13, 1999, which established by rule a deadline of August 27, 1999, for Respondent's reply. Before August 27, 1999, Respondent sought, and was granted, a continuance of the public hearing that had originally been scheduled for August 30, 1999. Respondent eventually submitted a list of witnesses pursuant to disciplinary counsel's request of August 13, 1999, on October 7, 1999. Respondent's burden to comply with CJCRP 22 remained despite his request for a continuance.

Failure or refusal to meet the requirements of CJCRP 22, and neglecting to seek an extension for answering disciplinary counsel's demand under the rule in light of a request for a continuance, can result in the imposition of a burden on disciplinary counsel and the Commission. Such conduct could be construed as being dilatory and otherwise disrespectful of the Commission's procedures. It could also be considered as an aggravating factor under CJCRP 6(c)(11); Respondent is fortunate that it wasn't.

K. Collins Sprague

Gregory R. Dallaire