

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED

MAY -9 2000

In Re the Matter of:

Honorable George W. Colby, Judge
Yakima County District Court
128 N. 2nd St.
Yakima, WA 98901-2614

No. 2511-F-85 COMMISSION ON JUDICIAL CONDUCT
STATEMENT OF CHARGES

Pursuant to authority granted in Washington State Constitution Article IV, Section 31, Chapter 2.64 RCW, and the Commission on Judicial Conduct Rules of Procedure ("CJCRP"), the Commission on Judicial Conduct ("Commission"), ordered this Statement of Charges alleging violations of the Code of Judicial Conduct by the Honorable George W. Colby.

A. BACKGROUND

The Honorable George W. Colby, (Respondent), was at all times discussed herein a judge of the Yakima County District Court, Yakima, Washington. On May 5, 1997, the first of numerous complaints was filed with the Commission on Judicial Conduct that led to the current charges. The judge was initially contacted, after a preliminary investigation, on January 5, 1998, at which time the Commission sent Respondent a letter inviting his response to allegations the Commission was considering. After Respondent requested and was granted an extension of time to respond, the Commission received his response on February 17, 1998. Following that date, the Commission received multiple additional complaints on new allegations regarding Respondent. After consideration of Respondent's response of February 17, 1998 and after investigation and consolidation of the new allegations, the Commission sent a Statement of Allegations to Respondent on June 17, 1999, inviting his response. After several requests for extension by Respondent were granted, the Commission received his responsive materials on August 13, 1999, September 3, 1999, November 24, 1999, and January 26, 2000. On February 9, 2000, after consideration of these responses, the Commission sent Respondent an Amended

1 Statement of Allegations containing many of the original allegations, deleting some of
2 them, and adding some new allegations. On March 10, 2000, the Commission received
3 Respondent's response to the Amended Statement of Allegations. Respondent's materials
4 submitted to the Commission comprise well over 2,000 pages of printed material in addition
5 to video and audiotape materials.

6 **B. FACTS SUPPORTING CHARGES**

7 II. Entry of Unintelligible or Improper Orders; Abuse of Contempt Power; Ex parte
8 Contact, and Intemperate Behavior From the Bench

9 II.i On November 15, 1995, Respondent presided over a fourth degree assault bench
10 trial in Yakima County District Court in Cause No. 3404 YCS, State of Washington
11 v. Gary Lynn DeVall. Respondent imposed an order against two witnesses in the
12 case, Rick Collins and Linda Collins (fka DeVall), to abstain from drinking and from
13 being under the influence of alcohol in the presence of a minor, Adam DeVall.
14 Respondent lacked jurisdictional authority to impose such an order.

15 II.ii Between November 15, 1995 and December 8, 1995 Respondent had *ex parte*
16 contact with the defendant, Gary Lynn DeVall, in the Yakima County District Court
17 case of State of Washington v. Gary Lynn DeVall, Cause No. 3404 YCS and on the
18 basis of that contact caused Rick and Linda Collins to be brought to court for a
19 hearing on December 8, 1995, without providing them notice as to the nature of the
20 hearing.

21 II.iii On December 8, 1995 Respondent held Rick Collins and Linda Collins summarily
22 in contempt of the court order he improperly entered on November 15, 1995 in the
23 Yakima County District Court case of State of Washington v. Gary Lynn DeVall
24 above referenced (paragraph 1). Respondent ignored Rick Collins' request for
25 counsel and had them incarcerated for two days in derogation of the procedures set
26 forth in RCW 7.21. This conduct was an illegal use of the contempt power and an
27 abrogation of the witnesses' constitutional rights.

28 II.iv In the course of the above-referenced December 8, 1995 hearing (paragraph 3),

1 Respondent made angry and demeaning comments to Linda Collins when she
2 asked to be heard in order to make arrangements for children who were expecting
3 her when they returned home from school. This conduct was a display of
4 intemperate demeanor lacking in judicial propriety and tending to diminish respect
5 for the judiciary.

6 III. Presiding Over Cases in Which Respondent had a Conflict of Interest or Engaged
7 in Improper Ex Parte Contacts, including but not limited to the following:

8 III.i John Stark Adams, Yakima County District Court case number 5136812 WSP. On
9 March 3, 1988, the defendant had *ex parte* contact with Respondent in Toppenish
10 District Court requesting his matter be heard by Respondent in Toppenish District
11 Court instead of Yakima, where it had been set. At the defendant's request,
12 Respondent had his file transferred to Respondent from Yakima and recalled his
13 outstanding bench warrant. This was done without notice to the prosecuting
14 attorney. John S. Adams is Respondent's brother in law. Despite this, Respondent
15 heard all of the matters on this case through its final disposition of dismissal on
16 October 26, 1990.

17 III.ii Byron B. Kent, Yakima County District Court case number 6505736. Byron B. Kent
18 is the brother of Respondent's longtime friend and former Yakima County District
19 Court clerk, Bonnie Kent Walker. On April 12, 1991, Byron Kent was charged with
20 Negligent Driving. On May 5, 1992, an agreed bail forfeiture of \$150.00 was
21 entered before Judge Randall Marquis in Yakima County District Court. On
22 September 29, 1992, at Respondent's direction Bonnie Walker called the clerk at
23 Yakima County District Court and advised that Respondent had ordered that the
24 charge be dismissed and taken off his record. This order was done off the record
25 and without any input from the state. The clerk refused because it was a matter
26 heard by Judge Marquis and he had not ordered this. On September 30, 1992,
27 Respondent signed an order dismissing the citation and expunging it from Byron
28 Kent's record, despite the fact that Judge Marquis had been contacted and

1 indicated it was not what he had ordered.

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3 III.iii Tadd Lynn Hill, Toppenish District Court case number 6221014. On June 12, 1990,
4 Tadd Lynn Hill was charged with Driving While Intoxicated. He is the son of
5 Respondent's longtime friend and former Yakima County District Court clerk, Bonnie
6 Kent Walker. Despite Respondent's personal relationship with defendant's mother,
7 Respondent did not recuse from this case until he had granted a motion to continue
8 on June 28, 1990 and presided over a pre-trial conference on July 7, 1990.

9 IV. Pattern or Practice of Engaging in Ex Parte and Otherwise Improper Contacts with
10 Defendants With Cases Pending Before the Court

11 IV.i Bruce Allen Smartlowit, Yakima County District Court, Toppenish District case
12 number 8222 YCS. The defendant was charged with Driving Under the Influence
13 and Driving While License Suspended in the 2nd Degree. On February 19, 1998 the
14 defendant's sister requested to speak with Respondent regarding an extension
15 before defendant served his jail time. The initial clerk helping her advised her she
16 could not speak with Respondent outside of the court room or without a case
17 calendared before the judge. She suggested that any request be made in writing.
18 The defendant's sister wrote a letter at the counter and was subsequently helped
19 by clerk Bonnie Kent Walker. Ms. Walker proceeded to bring the defendant and his
20 sister into the court room to discuss the matter with Respondent, without notifying
21 the State. There is no docket entry of Respondent's hearing with this defendant.

22 IV.ii Richard Neal Langan, Yakima County District Court, Toppenish District case
23 number 5597261. The defendant was charged with No Valid Operator's License.
24 On or about January 11, 1989, apparently believing the defendant had knowledge
25 of property that had been stolen from Respondent, personally, Respondent
26 informed the defendant in writing as follows: "*Langan If you know where my stuff*
27 *is-I will let you out-& Dismiss your case.*"

28 IV.iii James Littlebull, Toppenish District Court case number 203085 WSP. The

1 defendant was found by Respondent to be in violation of the terms of his sentence
2 for Negligent Driving in the First Degree, and Respondent imposed one day in jail
3 of his suspended sentence. He failed to serve that day within the time set for him,
4 and he informed the jailers of that. The jailers informed him he should set a hearing
5 in open court to request a later date to serve his jail. When he chanced to
6 encounter Respondent in the hallway, Respondent signed an amended order for
7 him on May 12, 1999, without a court hearing and without affording the prosecution
8 notice or an opportunity to be heard.

9 IV.iv Caroline S. Looney, 81027, 95943, 11977, 11976, while defendant was serving time
10 for four DUI convictions, Respondent entertained and granted an ex parte request
11 on her behalf to order her release from custody on furlough to attend a funeral
12 without notice to the prosecution or a hearing, and attempted to persuade another
13 judicial officer to also engage in such ex parte activity.

14 IV.v Robert Wayne Bjur, 237366, in which Respondent granted an ex parte request by
15 defendant, who is also an attorney who has frequently practiced before
16 Respondent, to alter the terms of his sentence. Respondent prepared and filed an
17 order dated September 13, 1999, granting that request without notice to the State.
18 Further, the order signed by Respondent falsely reflected that the September 13,
19 1999 order was entered at a hearing at which defense counsel Reed Pell and
20 Deputy Prosecutor Scott Jackson were present, whereas no hearing was actually
21 held and neither counsel were present for the signing of the document.

22 IV.vi Aldwin Looney, 8969 YCS and 8970YCS, in which Respondent entertained an ex
23 parte telephone call from defendant by telephone with regard to his noncompliance
24 with probation on multiple charges, and gave defendant direction with regard to his
25 case, without notice to or participation of the State.

26 IV.vii Respondent has maintained a practice of creating the appearance of impropriety
27 in apparent ex parte contacts with defense counsel, wherein Respondent invited
28 defense counsel, but not the State, into chambers for conversation immediately

1 prior to court hearings involving defense counsel.

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3 IV.viii Robert Arquette, Yakima District Court case number 6400389. Robert Arquette
4 appeared before Judge Marquis on July 25, 1991. He was sentenced to a
5 mandatory minimum 90 days for a combined Driving While Intoxicated/Driving While
6 License Revoked Habitual Traffic Offender. Respondent signed an Amended
7 Commitment on August 2, 1991 allowing the defendant to be released so he could
8 "work in the mountains." The case was filed in Yakima, had never been heard in the
9 lower valley courts (Toppenish or Sunnyside) or by Respondent, and the order was
10 entered without the knowledge of the prosecuting attorney. Respondent ordered
11 the defendant released as a result of an ex parte phone call from his employer.

12
13 V. Engaging in a Pattern or Practice of Failure or Inability to Follow the Law, and
14 Imposing Unlawful Conditions and Penalties or Failing to Impose Mandatory
Conditions and Sentences, including but not limited to the following cases:

15 V.i Adam S. Munson, Yakima County District Court, Sunnyside District Court case
16 number SDC 118893. On March 17, 1996, the defendant was charged with Driving
17 Under the Influence. A bench trial was held before Respondent on June 4, 1996.
18 On July 2, 1996, Respondent found the defendant not guilty. Despite the fact that
19 the dismissal divested the court of jurisdiction over the defendant, Respondent
20 ordered him to complete an alcohol treatment program. Following the dismissal,
21 Respondent required the defendant to attend review hearings on August 6, 1996
22 and February 11, 1997.

23 V.ii Apolinar Villegas, Yakima County District Court, Sunnyside District Court case
24 number 85574. Defendant was charged with 4th Degree Assault and pled guilty on
25 January 21, 1992. As a condition of his sentence, Respondent ordered the
26 defendant and his wife to attend church every Sunday until the next court date and
27 bring the bulletins for proof of attendance.

28 V.iii Jenna Lee Webber, 13654 YCS, following Respondent's dismissal of her case on

- 1 January 11, 2000, Respondent ordered defendant to post a copy of her criminal
2 record on her mirror, despite the court's lack of ongoing jurisdiction following a
3 dismissal.
- 4 V.iv Jesse Rodarte, 239173, Respondent sentenced defendant to less than the
5 mandatory minimum sentence, in violation of RCW 46.61.5505, for defendant's
6 fourth DUI within a five year period.
- 7 V.v Oscar Abundez, 92071, wherein Respondent sentenced a DUI defendant to less
8 than the mandatory minimum sentence under RCW 46.61.5505 .
- 9 V.vi Eberardo Garcia, 8958 YCS, wherein Respondent sentenced a DUI/DWLS 2nd
10 defendant after revoking his deferred prosecution, and specifically ordered that he
11 not be placed on probation, despite the requirement in RCW 46.61.5055(8).
- 12 V.vii Arlon Leon Rabe, 170645, wherein Respondent sentenced a DUI defendant after
13 revoking his deferred prosecution, and specifically ordered that he not be placed on
14 probation, despite the requirement in RCW 46.61.5055(8).
- 15 V.viii Elena Trujillo, Toppenish District case number 95-81036 WSP, wherein respondent
16 was recused from the case on March 1996, but nonetheless made multiple rulings
17 in case thereafter, including quashing a warrant issued by other judge, granting
18 multiple continuances beyond period of court's jurisdiction. He further "restarted"
19 probation on February 19, 1999.
- 20 VI. Engaging in a Pattern of Entering Orders Which Fail to Follow the Mandatory
21 Requirements of Chapter 10.05 RCW in the following cases, including but not
22 limited to:
- 23 VI.i Guy L. Gregg, Toppenish District case number 7817420, imposed jail time during
24 pendency of deferred prosecution despite lack of guilty finding; dismissed case prior
25 to completion of statutory time for deferred prosecution.
- 26 VI.ii Shane Harmon, Toppenish District case number 7715946, extended time to
27 complete deferred prosecution in violation of time limits imposed in statute; failed
28 to revoke defendant's deferred prosecution despite conviction of similar offense in

- 1 another jurisdiction during pendency of the deferral. Imposed fines despite lack of
2 authorization under statute to do so.
- 3 VI.iii Terry L Laws, Toppenish District case number 6781052, imposed jail time during
4 pendency of deferred prosecution despite lack of guilty finding.
- 5 VI.iv Jimmie O. Tyler, Toppenish District case number 59909, placed defendant on
6 deferred prosecution for two offenses, failed to revoke deferral despite knowledge
7 of defendant's subsequent conviction for same type of offense.
- 8 VI.v Francisco Munoz, Toppenish District case number 96-118325, while defendant was
9 on deferred prosecution program for DUI and DWLS 1st, Respondent learned
10 defendant was convicted of DWLS 3rd in another court during the pendency of the
11 deferred prosecution. Respondent imposed 30 days jail without revoking deferral.
- 12 VI.vi Linda Minthorn, Toppenish District case numbers 6112398, 6568242, 4213, and
13 202456. Respondent entered a deferred prosecution order for a DUI charge in
14 Case No. 6112398, and, despite conviction of a new DUI less than a year later in
15 Case No. 6568242 in the same court, failed to revoke the deferral and dismissed
16 the charge in Case No. 6112398 as a successfully completed deferral. Similarly,
17 Respondent entered a deferred prosecution for a DUI charge in Case No. 2413, and
18 despite the arrest, charge, and eventual conviction for a new DUI, Case No.
19 202456, Respondent entered a dismissal of the charge in Case No. 2413 as a
20 successfully completed deferral.
- 21 VI.vii Juan Cabrera, Sunnyside District case numbers 170532, 170533, in which
22 Respondent granted a deferred prosecution to a defendant despite the pendency
23 of another deferred prosecution program during a time period which made
24 defendant ineligible to enter another such program. Respondent maintained the
25 above-referenced cases on a deferral program despite having the first program
26 brought specifically to his attention by probation.
- 27 VI.viii In the case of State v. Sinforozo Villarreal, Sunnyside District Court Case No.
28 92132, Respondent allowed a DUI defendant to withdraw a guilty plea upon his

1 representation that he would enter a deferred prosecution. Respondent placed
2 defendant on a deferred prosecution without ever entering a deferred prosecution
3 order as required by statute.

4 VII. Possession and Use of Alcohol on Court Premises

5 VII.i On Saturday, November 21, 1998, Respondent brought champagne onto the
6 premises of the Yakima County Courthouse. While there, Respondent consumed
7 champagne and encouraged subordinate court employees, who were present and
8 on duty that day closing court files, to drink champagne. This was in violation of the
9 Yakima County Alcohol and Drug Abuse Policy Regulation No. 27-J.

10 VII.ii On multiple occasions since spring of 1998, including but not limited to Judge Lust's
11 swearing in ceremony on October 23, 1998, a joint district court and superior court
12 judge's meeting on May 24, 1999, and during court hours on May 21, 1999, on or
13 about December 6, 1999, December 29, 1999, January 11, 2000, January 12,
14 2000, and January 25, 2000, Respondent has been on the Yakima County
15 Courthouse premises after having consumed alcoholic beverages. This was in
16 violation of the Yakima County Alcohol and Drug Abuse Policy Regulation No. 27-J.
17 Other judges, court personnel, and attorneys at the Yakima County Courthouse
18 have on these occasions noted a detectable odor of alcoholic beverages about
19 Respondent's person. Some of these witnesses gained the impression that Judge
20 Colby's work performance was affected by his alcohol consumption. All of the
21 witnesses felt it was inappropriate for Respondent to have the odor of alcoholic
22 beverages about his person at the workplace. The impressions created by
23 Respondent detrimentally affected the integrity of the judiciary and undermined
24 public confidence in the administration of justice.

25 VIII. Utilizing Court Facilities, Personnel, and Materials for Personal Purposes

26 In Respondent's 1995 bid for appointment for the United States Court of
27 International Trade, he utilized court letterhead, envelopes, postage, facilities, and at least
28 five hours of secretarial time in corresponding with people in the United States and other

1 countries regarding this matter.

2 IX. Failure to Diligently Discharge Administrative Responsibilities, Maintain Professional
3 Competence in Judicial Administration and Facilitate the Performance of
4 Administrative Responsibilities of Other Judges and Court Officials, as illustrated by,
5 but not limited to, the following actions:

6 IX.i. Since approximately January 1, 1998, Respondent ignored district court policies and
7 procedures in regard to the scheduling of jury trials, imposition of bench warrant
8 fees, disregarded and disparaged the use of local court rules, and proposed the
9 criminal prosecution of the court administrator. Despite the direction of the
10 presiding judge and the agreement of the other two district court judges,
11 Respondent consistently and adamantly stated his intention to refuse to participate
12 in the administrative system of rotation agreed upon by the other judges and
13 directed by the presiding judge as being in the best interests of the court and the
14 efficient administration of justice. Despite Respondent's eventual acquiescence in
15 the rotation system this stated intention, announced regularly in the morning from
16 the bench, in judges meetings, in spoken and written correspondence with court
17 administrators and other personnel, has been highly disruptive and required many
18 hours and the attention of court personnel including judges, court staff, and the
19 office of the prosecutor.

20 IX.ii Since approximately January 1, 1998, Respondent attempted to unilaterally prevent
21 the other elected Yakima County District Court judges from making rulings on
22 criminal cases that originated out of the lower valley area of Yakima County, as
23 illustrated by, but not limited to, the following:

24 IX.ii.a. In approximately April of 1999, Respondent created a stamp which
25 was applied to cases that he had handled which stated: "Any Further Review
26 of This Case For Any Reason Will Be Done Solely By Judge Colby By Order
27 of Judge George W. Colby."

28 IX.ii.b. Since approximately January 1, 1998, in cases in which Respondent
was the sentencing judge, he required that the probation department place

1 Failure to Comply or Violation Reports in sealed envelopes addressed only
2 to him.

3 IX.iii. For years, Respondent pre-signed court orders and made them available to court
4 staff for use in his absence.

5 IX.iv Respondent's actions have often required court administration and clerks to have
6 to decide whether to follow Respondent's direct orders or the administrative orders
7 on policies and procedures of the rest of the bench. This has disrupted the process
8 of the court and caused considerable stress and confusion among other workers in
9 the court.

10
11 **C. BASIS FOR COMMISSION ACTION**

12 1. On April 7, 2000, the Commission determined that probable cause exists to
13 believe that Respondent has violated Canons 1, 2(A), 2(B), 3(A)(1), 3(A)(3), 3(A)(4),
14 3(A)(5), 3(B)(1), 3(B)(2), 3(D)(1), of the Judicial Conduct (CJC) which state:

15 **CANON 1**

16 **Judges shall uphold the integrity and
17 independence of the judiciary.**

18 An independent and honorable judiciary is indispensable to justice in our
19 society. Judges should participate in establishing, maintaining and enforcing high
20 standards of judicial conduct, and shall personally observe those standards so that the
integrity and independence of the judiciary will be preserved. The provisions of this
Code are to be construed and applied to further that objective.

21 **Comment**

22 *Deference to the judgments and rulings of courts depends upon public*
23 *confidence in the integrity and independence of judges. The integrity and*
24 *independence of judges depends in turn upon their acting without fear or favor.*
25 *Although judges should be independent, they must comply with the law, including the*
26 *provisions of this Code. Public confidence in the impartiality of the judiciary is*
27 *maintained by the adherence of each judge to this responsibility. Conversely, violation*
28 *of this Code diminishes public confidence in the judiciary and thereby does injury to the*
system of government under law.

26 **CANON 2**

27 **Judges should avoid impropriety and the appearance of
28 impropriety in all their activities.**

(A) Judges should respect and comply with the law and should act at all

1 times in a manner that promotes public confidence in the integrity and impartiality of the
2 judiciary.

3 **(B)** Judges should not allow family, social, or other relationships to influence
4 their judicial conduct or judgment. Judges should not lend the prestige of judicial office
5 to advance the private interests of the judge or others; nor should judges convey or
6 permit others to convey the impression that they are in a special position to influence
7 them. Judges should not testify voluntarily as character witnesses.

8 **Comment**

9 *Maintaining the prestige of judicial office is essential to a system of government in which*
10 *the judiciary functions independently of the executive and legislative branches. Respect for the*
11 *judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should*
12 *distinguish between proper and improper use of the prestige of office in all of their activities.*

13 *The testimony of judges as character witnesses injects the prestige of their office into*
14 *the proceeding in which they testify and may be misunderstood to be an official testimonial.*
15 *This canon however, does not afford judges a privilege against testifying in response to a*
16 *subpoena.*

17 **CANON 3**

18 **Judges shall perform the duties of their office**
19 **impartially and diligently.**

20 The judicial duties of judges should take precedence over all other activities.
21 Their judicial duties include all the duties of office prescribed by law. In the performance
22 of these duties, the following standards apply:

23 **(A) Adjudicative Responsibilities.**

24 **(1)** Judges should be faithful to the law and maintain professional competence in
25 it. Judges should be unswayed by partisan interests, public clamor or fear of criticism.

26

27 **(3)** Judges should be patient, dignified and courteous to litigants, jurors, witnesses,
28 lawyers and others with whom judges deal in their official capacity, and should require
similar conduct of lawyers, and of the staff, court officials and others subject to their
direction and control.

29 **Comment**

30 *The duty to hear all proceedings fairly and with patience is not inconsistent with*
31 *the duty to dispose promptly of the business of the court. Courts can be efficient and*
32 *businesslike while being patient and deliberate.*

33 **(4)** Judges should accord to every person who is legally interested in a proceeding,
34 or that person's lawyer, full right to be heard according to law, and, except as authorized
35 by law, neither initiate nor consider ex parte or other communications concerning a
36 pending or impending proceeding. Judges, however, may obtain the advice of a
37 disinterested expert on the law applicable to a proceeding before them, by amicus
38 curiae only, if they afford the parties reasonable opportunity to respond.

39 **Comment**

40 *The proscription against communications concerning a proceeding includes*
41 *communications from lawyers, law teachers, and other persons who are not participants*

1 in the proceeding, except to the limited extent permitted. It does not preclude judges
2 from consulting with other judges, or with court personnel whose function is to aid
3 judges in carrying out their adjudicative responsibilities. An appropriate and often
desirable procedure for a court to obtain the advice of a disinterested expert on legal
issues is to invite the expert to file a brief amicus curiae.

4 (5) Judges shall perform judicial duties without bias or prejudice.

5 **Comment**

6 *A judge must perform judicial duties impartially and fairly. A judge who manifests
bias on any basis in a proceeding impairs the fairness of the proceeding and brings the
7 judiciary into disrepute.*

8
9 **(B) Administrative Responsibilities.**

10 (1) Judges should diligently discharge their administrative responsibilities, maintain
professional competence in judicial administration and facilitate the performance of the
11 administrative responsibilities of other judges and court officials.

12 (2) Judges should require their staff and court officials subject to their direction and
control to observe the standards of fidelity and diligence that apply to them.

13

14 **(D) Disqualification.**

15 (1) Judges should disqualify themselves in a proceeding in which their impartiality
might reasonably be questioned, including but not limited to instances in which:

16 (a) the judge has a personal bias or prejudice concerning a party, or
17 personal knowledge of disputed evidentiary facts concerning the proceeding;

18 (b) the judge previously served as a lawyer or was a material witness in the
matter in controversy, or a lawyer with whom the judge previously practiced law served
19 during such association as a lawyer concerning the matter or such lawyer has been a
material witness concerning it;

20 (c) the judge knows that, individually or as a fiduciary, the judge or the
judge's spouse or member of the judge's family residing in the judge's household, has
21 an economic interest in the subject matter in controversy or in a party to the proceeding,
22 or is an officer, director or trustee of a party or has any other interest that could be
substantially affected by the outcome of the proceeding, unless there is a remittal of
23 disqualification;

24 (d) the judge or the judge's spouse or member of the judge's family residing
in the judge's household, or the spouse of such a person:

25 (i) is a party to the proceeding, or an officer, director, or trustee of
26 a party;

27 (ii) is acting as a lawyer in the proceeding;

28 (iii) is to the judge's knowledge likely to be a material witness in the

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proceeding.

Comment

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "their impartiality might reasonably be questioned" under Canon 3(D)(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" may require the judge's disqualification.

D. PROCEDURE FOR RESPONDENT TO ANSWER STATEMENT OF CHARGES

In accordance with CJCRP 20(a), Respondent shall file a written answer to this Statement of Charges with the Commission and serve a copy upon disciplinary counsel in this matter, Steven A. Reisler; Ogden, Murphy, and Wallace; 2100 Westlake Center Tower, 1601 Fifth Avenue, Seattle, WA 98101-1686 within twenty-one (21) days after the date of service. As provided by CJCRP 21(a), failure to timely answer shall constitute an admission of the factual allegations.

DATED this 9th day of May, 2000.

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



David Akana
Executive Director
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Olympia, WA 98507