

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

FILED

DEC 16 1999

COMMISSION ON JUDICIAL CONDUCT

3 In Re the Matter of: }
4 The Honorable Rudolph J. Tollefson }
5 Pierce County Superior Court }
6 930 Tacoma Avenue South }
Tacoma, Washington 98402 }

No. 98-2699-F-81

STATEMENT OF CHARGES

7
8 Pursuant to authority granted in Washington State Constitution Article IV, Section
9 31, Chapter 2.64 RCW, and the Commission on Judicial Conduct Rules of Procedure
10 ("CJCRP"), the Commission on Judicial Conduct ("Commission"), ordered this Statement
11 of Charges alleging violations of the Code of Judicial Conduct by the Honorable Rudolph
12 J. Tollefson.

13 **I. BACKGROUND**

14
15 1 The Honorable Rudolph J. Tollefson ("Respondent" herein) is now a Pierce
16 County Superior Court Judge. Immediately before assuming the position in Superior
17 Court, Respondent was a judge of the Pierce County District Court.

18 1.2 On February 27, 1998, April 6, 1998, May 11, 1998, and June 25, 1998,
19 complaints were filed with the Commission on Judicial Conduct that led to the current
20 charges. The judge was initially contacted, after a preliminary investigation, on June 14,
21 1999, at which time the Commission on Judicial Conduct sent Respondent a letter
22 informing him that the Commission was commencing initial proceedings against him. A
23 Statement of Allegations was enclosed and a response was invited. Respondent
24 responded to the Statement of Allegations, after requests for extension of time to respond
25 were granted, on August 12, 1999. Respondent's final response to an amended Statement
26 of Allegations was received on November 29, 1999. On December 3, 1999 the
27 Commission on Judicial Conduct found there was probable cause that the Code of Judicial
28 Conduct had been violated and ordered the filing of this Statement of Charges.

1 **II. CONDUCT GIVING RISE TO CHARGES**

2
3 **2. Intemperate and Abusive Language and Behavior Toward Court Staff and**
4 **Colleagues**

5 2.1 On April 23, 1998 at approximately 8:45 a.m., Respondent, who was upset
6 about the designation by the managing court reporter of a particular court reporter to work
7 in his courtroom, engaged in inappropriate, abusive language and conduct toward
8 Raelene Semago, the managing court reporter, in the presence of other court personnel.
9 Despite Ms. Semago's efforts to remove herself from Respondent's verbal abuse,
10 Respondent followed her through a courtroom, a judge's chambers, and a public hallway,
11 to a bank of public elevators, while speaking loudly and angrily at her. This occurred at
12 a time and places where court staff witnessed his behavior and were subjected to his
13 anger, and when members of the public were exposed to his inappropriate anger and
14 behavior.

15 2.2 On or about January 3, 1997, after Respondent had been elected to the
16 Pierce County Superior Court bench, but before he had taken office, he telephoned Pierce
17 County Court Administration and spoke with Deputy Administrator Susan Dye. Upset
18 about his courtroom and parking assignments, he used inappropriate, angry and abusive
19 language in speaking with Ms. Dye. She forwarded the call to Acting Presiding Judge
20 Vicki Hogan. In the conversation with Judge Hogan, Respondent displayed his anger and
21 was verbally abusive.

22 The behavior outlined in allegations 2.1 and 2.2 demonstrates a pattern of
23 inappropriate demeanor and language in relating to court staff and judicial colleagues.

24
25 **3. Improperly Entering Ex Parte Orders Without Hearing or Notice to Parties**

26 3.1 On November 4, 1996, while sitting as a District Court Judge, Respondent
27 entered an order which provided for the conviction and sentencing of William Satterwhite,
28 cause number 96C002195. On November 15, 1996, Respondent entered an order in the

1 same case, which had the effect of changing or redefining the sentencing provisions of the
2 November 4, 1996 order. There was no hearing held on November 15th prior to the entry
3 of that order, and no notice was provided to either the prosecutor, the defendant, or to
4 defense counsel.

5 3.2 On December 17, 1996, District Court Commissioner Jasprica, heard a
6 motion in the same case. She ordered the defendant released from custody under a
7 number of conditions. Respondent had been elected to the Superior Court by that time.
8 He was not scheduled to take the bench in District Court 1 again. On December 18th,
9 1996, the Deputy Prosecuting Attorney filed a Motion to Reconsider, which, under the rules
10 of the court, is heard by the judicial officer whose order is sought to be amended. Herein,
11 that would have been Commissioner Jasprica. There was no Motion for Revision pending.
12 The Respondent took the matter before himself on December 18th, 1996, without notice to
13 either the Deputy Prosecuting Attorney, the defendant or to defense counsel, and without
14 a court hearing, and entered a new order, changing the terms of the Commissioner's
15 December 17th order.

16
17 **4. Improperly Engaging in Ex Parte Contacts; Failing to Maintain Impartiality in**
18 **a Case Before the Court**

19 Respondent Judge Rudolph Tollefson initiated numerous ex parte contacts
20 involving Pierce County Superior Court Cause No. 94-5-00454-5, Inderbitzin v. Allen. The
21 matter was first before Respondent in October of 1997, on Ms. Allen's motion to revise
22 Commissioner Paul Boyle's September 29, 1997 dismissal of Ms. Allen's petition to modify
23 a parenting plan. Respondent affirmed the Commissioner's dismissal of Ms. Allen's
24 petition on October 17, 1997. Ms. Allen then sent two letters addressed to Respondent.
25 Although Respondent considered these letters in making further rulings upon the case, he
26 did not reveal them to the opposing party, his counsel, or to the guardian ad litem ("GAL").
27 Thereafter, Ms. Allen brought motions in December of 1997 to access school records, to
28 discharge the GAL, and to modify the parenting plan. At that point, Respondent undertook

1 an ex parte investigation outside the courtroom and without notice to the parties. These
2 actions include but are not limited to the following:

3 4.1 On December 18, 1997, the day before a hearing on Ms. Allen's motions,
4 Respondent telephoned Mr. Inderbitzin's attorney from a previous dissolution, Barbara Jo
5 Sylvestor. Ms. Sylvestor returned Respondent's call the following day, but declined to
6 discuss the prior case with Respondent, although he initiated discussion of the details of
7 the case currently before him and sought information from Mr. Inderbitzin's former attorney
8 about her client.

9 4.2 During the month of January 1998, Respondent attempted to reach the
10 former spouse of Mark Inderbitzin at her place of employment. When her employer would
11 not release her home telephone number to him, he left a message for her to call him at his
12 residence. The former spouse returned his call, not understanding why a judge had
13 requested she call him at his home. In his telephone call with her, Respondent discussed
14 the current court case involving Mark Inderbitzin and solicited information from Mr.
15 Inderbitzin's former wife about him. Respondent also informed her he was appointing
16 Douglas Schafer as the GAL in the new Inderbitzin case, and directed her to call Mr.
17 Schafer to discuss her knowledge of Mr. Inderbitzin. Mr. Schafer had not been appointed
18 at the time of this contact by Respondent, and the parties had not been advised of
19 Respondent's intentions.

20 4.3 On January 22, 1998 Respondent left a message for Dr. Richard Washburn,
21 Ph.D., that he was interested in questioning him with regard to the Inderbitzin v. Allen
22 case. Dr. Washburn was one of the mental health professionals appointed to conduct
23 psychological evaluations of the parties in April of 1995. Respondent also attempted to
24 reach Dr. Richard Peterson, Ph.D., who had performed a psychological evaluation on
25 Mark Inderbitzin.

26 4.4 On January 22, 1998, Respondent contacted Julia Moore, M.D., Child
27 Psychiatrist, and questioned her on how she arrived at her conclusions in her report to the
28 court of March 1995.

1 4.5 Prior to January 23, 1998, Respondent initiated contact with Dr. Allen
2 Traywick, Ph.D., a psychologist, regarding the performance of a 1984 psychological
3 evaluation on Mark Inderbitzin and sought a copy of the report. Dr. Traywick would not
4 supply a copy of this evaluation to Respondent without a subpoena.

5 4.6 Respondent discussed this case and the parties with attorney Douglas
6 Schafer in January 1998, soliciting Mr. Schafer's participation as Guardian ad Litem to
7 replace the existing guardian. Through the course of Respondent's discussions with him,
8 Respondent learned that Douglas Schafer had prior contact with Lynda Allen with regard
9 to her claim for custody, had prior negative knowledge of the existing Guardian ad Litem,
10 and that Mr. Schafer was not qualified by experience or training to serve as a Guardian ad
11 Litem in a child custody case. Despite this information, Respondent ignored both the
12 conflict of interest which Mr. Schafer had regarding Ms. Allen and GAL Downing, and Mr.
13 Schafer's lack of qualifications for the appointment.

14 4.7 On January 23, 1998, Respondent appointed Douglas Schafer as guardian
15 ad litem for the minor child in Pierce County Superior Court Cause No. 94-5-00454-5.
16 Prior to the appointment of Douglas Schafer, Respondent had notice of Mr. Schafer's
17 conflict of interest in the case. Respondent made this appointment knowing Douglas
18 Schafer was not qualified to act as guardian ad litem pursuant to RCW 26.12.177 and that
19 he was not on the Pierce County GAL registry list.

20 4.8 Between December 1, 1997 and April 22, 1998, Respondent spoke with John
21 Gillie, a reporter for the *Tacoma News Tribune* proposing he write an article as to the
22 position of one of the parties in an ongoing Pierce County case, Pierce County Superior
23 Court Cause No. 94-5-00454-5, over which he was then presiding. On May 13, 1998 an
24 article written by John Gillie discussing this case and Respondent's solicitation of such an
25 article was published in the *Tacoma News Tribune*.

26 5. Respondent failed to remain a detached and neutral decision maker while
27 he presided over Pierce County Superior Court Cause No. 94-5-00454-5, Inderbitzin v.
28 Allen. In the course of the ex parte contacts, comments, and appointments, related above,

1 and in Respondent's rulings and orders, and in Respondent's conduct as judge in this
2 case, he demonstrated a bias and lack of impartiality in a matter before his court. The
3 result of this conduct was to cause undue disruption and delay for the parties and at the
4 appellate court level, to undermine public confidence in the administration of justice and
5 detrimentally affecting faith in the integrity of the judiciary.

6
7 **6. Failure to Establish, Maintain and Enforce High Standards of Judicial Conduct,**
8 **and to Personally Observe Those Standards so that the Integrity and Independence**
9 **of the Judiciary will be preserved.**

10 6.1 Respondent has, by the behavior outlined above, demonstrated an
11 overarching lack of regard for the appearance and reality of the integrity of the judiciary,
12 by treating colleagues, litigants and court workers abusively, by disregarding court
13 procedure and the right of all parties to be heard in a dispute, by failing to observe the
14 impartiality required of a court officer in a proceeding in a fashion that brings the judiciary
15 into disrepute.

16 **III. BASIS FOR COMMISSION ACTION**

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18 7. On June 14, 1999, the Commission sent Judge Tollefson a Statement of Allegations
19 pursuant to CJCRP 17(e). Judge Tollefson responded to the Statement of Allegations on
20 August 12, 1999.

21 8. On October 6, 1999, the Commission sent Judge Tollefson a Supplemental
22 Statement of Allegations. Judge Tollefson requested clarification, and the Commission
23 sent affidavits supporting the Supplemental Statement of Allegations on October 14 and
24 October 18, 1999. Judge Tollefson responded to the Supplemental Statement of
25 Allegations on October 27, 1999. A due date of November 24, 1999, was offered for
26 further input from Respondent by the Commission. On November 10, 1999, Respondent
27 was provided with the date upon which Judge Hogan recalls that her conversation with him
28 occurred, and he was again invited to submit any further input by November 24, 1999.

1 9. On December 3, 1999, the Commission determined that there was probable cause
2 that Judge Tollefson violated Canons 1, 2(A), 2(B), 3(A)(1, 2, 3, 4, 5, and 7), 3(B)(1),
3 3(B)(3) and 3(D)(1) of the Code of Judicial Conduct which state as follows:

4 **CANON 1**

5 **Judges shall uphold the integrity and**
6 **independence of the judiciary.**

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

11 **Comment**

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

18 **CANON 2**

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

20 (A) Judges should respect and comply with the law and should act at all times in a manner that
21 promotes public confidence in the integrity and impartiality of the judiciary.

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

26 **Comment**

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

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

CANON 3

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

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

(A) **Adjudicative Responsibilities.**

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

2 (2) Judges should maintain order and decorum in proceedings before them.

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

6 **Comment**

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

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

12 **Comment**

13 *The proscription against communications concerning a proceeding includes communications from
lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited
extent permitted. It does not preclude judges from consulting with other judges, or with court personnel whose
function is to aid judges in carrying out their adjudicative responsibilities.*

14 *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.*

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

16 **Comment**

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

19

20 (7) Judges shall not, while a proceeding is pending or impending in any court, make any
21 public comment that might reasonably be expected to affect its outcome or impair its fairness or
22 make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge
shall require similar abstention on the part of court personnel subject to the judge's direction and
control. This section does not prohibit judges from making public statements in the course of their
official duties or from explaining for public information the procedures of the court. This section
does not apply to proceedings in which the judge is a litigant in a personal capacity.

23

24 **(B) Administrative Responsibilities.**

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

28

1 (3) Judges should not make unnecessary appointments. They should exercise their
2 power of appointment only on the basis of merit, avoiding nepotism and favoritism. They should not
3 approve compensation of appointees beyond the fair value of services rendered.

4 **Comment**

5 *Appointees of the judge include officials such as referees, commissioners, special masters, receivers,
6 guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment
7 or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.*

8 **(D) Disqualification.**

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

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

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

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

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

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

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

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

29 **Comment**

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

35 **IV. PROCEDURE FOR RESPONDENT TO ANSWER STATEMENT OF CHARGES**

36 In accordance with CJCRP 20(a), Respondent Judge Tollefson shall file a written
37 answer to this Statement of Charges with the Commission and serve a copy on disciplinary
38 counsel in this matter, Rita Bender, 1301 Fifth Avenue, Suite 3401, Seattle, Washington

1 98101. Pursuant to CJCRP 21(a), failure to answer the formal charges shall constitute an
2 admission of the factual allegations.

3
4 DATED THIS 16th day of December, 1999.

6 COMMISSION ON JUDICIAL CONDUCT
7 OF THE STATE OF WASHINGTON

8 *David Akana*

9 _____
10 David Akana
11 Executive Director
12 PO Box 1817
13 Olympia, WA 98507

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