

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

**FILED
FEB - 4 2000**

COMMISSION ON JUDICIAL CONDUCT

IN RE THE MATTER OF:)

) NO. 98-2911-F-80

The Honorable James W. Bates, Jr.)
Superior Court Judge, King County)

) **STIPULATION AND ORDER
OF CENSURE
RECOMMENDATION OF
SUSPENSION**

_____)

The Honorable James W. Bates, Jr. ("Respondent"), is now and has been since 1981 a judge of the King County Superior Court. On October 9, 1998, a complaint was filed with the Commission on Judicial Conduct that led to the current charges. The judge was initially contacted, after a preliminary investigation, on February 25, 1999. On June 21, 1999, the Commission on Judicial Conduct sent Respondent a letter informing him that the Commission was commencing initial proceedings against him. A Statement of Allegations was enclosed and a response was invited. Respondent responded to the Statement of Allegations on July 21, 1999. Pursuant to Article IV, Section 31 of the Washington Constitution, Chapter 2.64 RCW, and CJCRP 23, the Washington Commission on Judicial Conduct ("Commission") and the Honorable James W. Bates ("Respondent") hereby stipulate and agree as follows:

1. The Honorable James W. Bates, Jr. (Respondent) is and has been since 1981 a judge of the King County Superior Court.
2. If a contested hearing were held in this matter, witnesses would testify as follows:
 - a. For a period of about six years starting in the mid-1980s, Respondent maintained a sexual relationship and lived with a court employee ("Employee 1") who was under his direct daily supervision. Evidence would show that, although apparently beginning as a

consensual relationship, Employee 1 felt the relationship was maintained by Respondent through Respondent's threats to terminate Employee 1's employment with the court if she were to terminate the relationship with him. Respondent would testify that though the relationship was consensual, it gave rise to the appearance of impropriety since it started after Employee 1 began to work for him and as the direct supervisor of an employee with whom he was living, it could appear that there was a power imbalance in her ability to terminate the relationship. Employee #1 on at least one occasion left her employment and then later returned.

b. Because of having both a personal and work place relationship with Employee 1, Respondent made comments of a sexual nature at the work place which were not appropriate between and employer and employee. Employee 1 would testify that Respondent made comments of a sexual nature to her prior to the inception of their personal relationship, and that after the inception of the relationship, he asked her to perform sex acts upon him in chambers. Respondent would testify that this did not happen.

c. Were the matter to proceed to a hearing, Employee 1 would testify that in the courthouse, during the time Respondent was engaged in a personal relationship with Employee 1, Respondent on at least two occasions made comments to Employee 1 that Employee 1 felt were sexual and inappropriate regarding autopsy photographs and other evidence in murder cases. Were the matter to proceed to a contested hearing, Respondent would produce evidence that such comments were not made.

3. In the early portion of the 1980s, Respondent developed a workplace friendship with a female court employee. (Employee 2.) She did not work directly for him and they did not have a physical relationship. Respondent made remarks to Employee 2 of a sexual nature while she was engaged in her official duties, and one time sent her a graphic article, apparently from a medical journal, through the office mail system. Employee 2 would testify that Respondent suggested she might find autopsy photos in a gruesome double murder case exciting or interesting, and alluded

to evidence regarding sex that was presented during the course of the trial in question. Employee 2 would also testify that Respondent telephoned her while she was on duty in court, and made an outlandish comment of a sexual nature to her. Employee 2 would testify she found the comments disruptive to her work and personally threatening. Respondent would deny making comments regarding autopsy photographs or making the telephone call. He would admit that he sent the graphic medical article and occasionally make jokes of a sexual nature, and would testify he felt his actions were understood and perceived by the employee to be in jest, and that they fell within the bounds of the relationship. He failed to realize that the employee found his actions to be offensive. She complained to other court officials, one of whom told Respondent he was acting in a manner that was upsetting to the employee. Respondent did not make similar comments or relay similar materials after his discussion with the other court official.

4. In the event the matter were to proceed to a hearing, evidence would be produced that would show that in the mid to late 1980's, Respondent told a female court employee ("Employee 3") under his direct supervision that he had dreamt of marrying her or being married to her and having children. Employee 3 would testify that after she told Respondent she was not available for a relationship with him that their working relationship deteriorated to the point that Respondent ultimately terminated her employment by telling her to go home. Respondent would produce evidence that this series of incidents did not occur. Respondent and Employee 3 resolved this situation by agreeing she would resign before her one year appointment had expired, but after she had an opportunity to find another job.

5. Respondent agrees that the actions that he stipulates to as described above that he took while serving in the capacity of Superior Court Judge are contrary to Canons 1, 2(A), 2(B), and 3(A)(3) of the Code of Judicial Conduct which state:

CANON 1

Judges shall uphold the integrity and independence of the judiciary.

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining and enforcing high 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.

Comment

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

CANON 2

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

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

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

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.

(3) Judges should be patient, dignified and courteous to litigants, jurors, witnesses, 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.

6. When considering the appropriate sanction in this matter, Respondent and the Commission have taken into account Respondent's long term of service, the absence of prior disciplinary actions, the passage of time since the above-referenced events, the fact that no other employees have since made allegations throughout the years since these allegations arose, and Respondent's representations and evidence of willingness to change his behavior, the recognition by Respondent that he should not have acted as he did and the fact that the conduct did not occur in public and did not impact his decisions or actions in court cases, and a recognition by Respondent and the Commission that this case presents some allegations which, if a hearing to determine the truth of the allegations was conducted, would necessarily re-open wounds of the families of crime victims, regardless of whether the allegations were true or false.

7. This Stipulation shall not become effective until approved by the Commission on Judicial Conduct and the Supreme Court. If the Stipulation is not accepted or does not become effective, the matter will proceed as though this Stipulation was not entered into.

AGREEMENT

8. Respondent does hereby agree to accept a censure with a recommended thirty day suspension without pay. A censure is a written action of the Commission that finds that the conduct of the respondent violates a rule of judicial conduct, detrimentally affects the integrity of the judiciary, and undermines public confidence in the administration of justice.

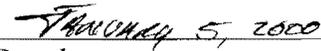
9. Respondent recognizes that his misconduct, rooted in his personal behavior, has effects on the judiciary. Accordingly, Respondent agrees to accept personal responsibility and to take steps to attempt to privately redress individuals affected, and to attend at his own expense a course of at least 16 hours in sensitivity training, and a course for judges of at least two days duration approved in

advance by the Chair of the Commission. Such course shall be completed within one year from the date of filing of this agreement. Upon satisfactory completion, Respondent shall file an affidavit that the course was completed. Respondent further agrees that he will not retaliate against any person or organization associated in any manner with this proceeding nor shall Respondent repeat the violation.

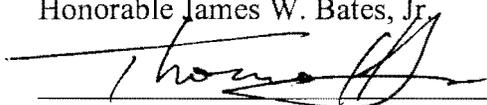
10. Respondent further agrees that he will act and speak at all times in a careful and judicious way and to understand that what a judge might consider humorous, particularly matters of a sexual nature, may be offensive to others who feel powerless to either protest or otherwise act to stop such actions by a judge.



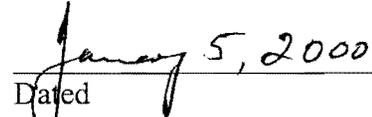
Honorable James W. Bates, Jr.



Dated



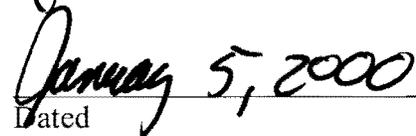
Thomas Fain, Attorney for Respondent



Dated



Herman Wacker, Counsel for Commission



Dated

ORDER OF CENSURE

The Commission has an obligation to the public, which obligation includes the need to protect and/or be sensitive to the emotional well being of complaining witnesses and others who in this case, would be unwillingly drawn into a hurtful situation. Accordingly, it is for this compelling reason as well as the other factors described in the body of the stipulation, that the Commission accepts this stipulation.

Based upon the above stipulation and agreement, the Commission on Judicial Conduct hereby orders, and Judge James W. Bates, ^{JR} Respondent, is hereby CENSURED for violating Canons 1, 2(A) 2(B), and 3(A)(3) of the Code of Judicial Conduct. The Commission on Judicial Conduct further recommends to the State Supreme Court that Respondent be suspended without pay from judicial office for a thirty day period. Respondent shall fulfill the terms of the agreement as above set forth.

Dated this 4TH day of FEBRUARY 2000



Gregory R. Dallaire, Chair
Commission on Judicial Conduct