

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

FILED

OCT 25 2001

COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of the)
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HONORABLE STEVEN L. MICHELS)
Sunnyside Municipal Court)
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No. 2969-F-92

**ANSWER TO STATEMENT OF
CHARGES AND AFFIRMATIVE
DEFENSES**

I.

COMES NOW, THE HONORABLE STEVEN L. MICHELS, who respectfully denies that any conduct described in the Commission's complaint violates the Canons as charged.

FURTHERMORE, THE HONORABLE STEVEN L. MICHELS alleges the Commission has mis-characterized and misrepresented said conduct, and, therefore denies the same.

II.

AS AFFIRMATIVE DEFENSES AND COUNTER-ALLEGATIONS, THE HONORABLE STEVEN L. MICHELS ALLEGES AS FOLLOWS:

1. The information used as the basis of the Commission's complaint has been unlawfully and illegally obtained, and, therefore, the complaint should be dismissed.
2. In allowing unlawful and illegally obtained information as a basis for the complaint, the Commission is allowing itself to become involved in a political dispute which exceeds the authority of the Commission and the complaint should be dismissed.
3. After receiving the initial information which led to these complaints, the Commission held that information for as long as several years without notifying the Judge involved. After the Judge initially responded, the Commission waited more than 18 months to bring formal charges. By waiting such

a long period of time, the Judge is denied the right to thoroughly defend himself as the tapes which contain the verbatim record of the proceedings involved have been destroyed. On this basis, i.e. the basis of laches, equity, statute of limitations and/or not proceeding in a timely fashion, the complaint should be dismissed. Furthermore, the Judge has been denied his right to defend himself and to due process therein. Also on this basis, the complaint should be dismissed.

4. In this case the Commission, in allowing anonymous complaints, has deprived the right of the Judge to face his accuser as is required in all civilized proceedings. Only in inquisitions such as those conducted by barbarian societies, is the accused denied the right to confront his accusers. The accuser, herein, is not a court clerk or other similar type of a person who needs to be protected from retribution by the victim Judge. In the present case, the actions complained of are not filed by any party to the action, i.e. no defendant, prosecutor, attorney or any other involved person with the particular case has filed any complaint. The complaints have been filed by a vindictive judge, or someone under his direction, who peruses the Court data base for such information. In such cases, the Commission is without standing to proceed. The Commission is allowing an abuse of its function and the complaint should be dismissed.

5. Many of the allegations are of the type, that, if the Judge committed an error, the proper remedy is an appeal to the Superior Court. RCW 3.02.02 provides review of proceedings in a court of limited jurisdiction shall be by the Superior Court. The question of whether a guilty plea form is adequate is one for the Superior Courts and the appellate courts to decide, not this Commission. The Commission is exceeding and abusing its authority in such cases and such complaints should be dismissed.

6. The Commission applies its rules differently to different victim judges. In my situation the Commission made its allegations public upon my being served the complaint. In Judge Ray Reid's case, the Commission did not make public the complaint for 2 months after the service. This unequal application of the rules shows the Commission is biased and as a result of this illegal bias, the complaint should be dismissed. **In fact, the Commission should not be allowed to prosecute the good judges it is supposed to protect until it is investigated by the State Supreme Court and the Legislature in this regard.**

7. The Commission is biased in this case and should not act as a judge. The Commission oversees the investigation of these allegations. The Commission then alleges the victim judge is guilty of these allegations and hires prosecutors to prosecute the victim judge. The Commission then sits as the judge in the matter. This deprives the victim judge of due process as he is entitled to a judge who has not previously made up its mind in the matter. Here the Commission alleges the judge is guilty and then says it sits as an unbiased judge in the matter. On the basis of the impossibility of receiving a fair hearing, the complaint should be dismissed.

8. The Commission hires special attorneys to prosecute the victim judges. The Commission refuses to hire attorneys to represent the victim judges. In my situation, I sat as Pro Tem Judge without pay in an impoverished community who could not afford to hire a Pro Tem Judge. In fact, the impoverished community does not seem to even have insurance coverage to protect its Pro Tem Judge in such a situation. The Commission is denying the victim judge's right to be represented by

an attorney by not providing the funding for an attorney. Such a deprivation takes the judge's property and rights without due process of law. On this basis, the complaint should be dismissed.

9. The issue of my sitting as Judge Pro Tem is now moot and those allegations should be dismissed. All of the allegations are alleged to have occurred when I sat as Judge Pro Tem without pay. I have now resigned that position. The problem has been extinguished. The complaint should be dismissed.

10. The question before the Commission of my using inadequate guilty plea forms has also been addressed by the Commission. Judge Reid of the Toppenish Municipal Court has been prosecuted by the Commission and the guilty plea forms have been revised. The guilty plea problem is moot and the complaint should be dismissed. It is the duty of the sitting judge to use proper guilty plea forms in court, not the responsibility of a temporary substitute judge. It is common practice for Pro Tem Judges to use the forms of the court in which he substitutes. Pro Tems do not carry their own guilty plea forms to another court. The Commission is prosecuting the wrong judge when it prosecutes the Pro Tem. The complaint should be dismissed.

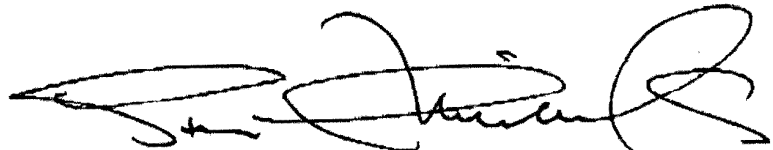
11. When a Pro Tem Judge finds a defendant before him whom he has or is representing, it is not error to continue that case so another judge can hear the case. That resetting is an administrative function of the court and is not of such an ethical nature to merit prosecution by this Commission. The complaint should be dismissed.

12. There exist other affirmative allegations which the Judge reserves the right to address at the hearing.

13. Any sanction by this Commission against Judge Michels should relate to Judge Michels sitting in Toppenish, not in his own court (Sunnyside Municipal Court). Any sanction otherwise is improper and deprives the citizens of Sunnyside from choosing the judge they chose through their elected officials.

WHEREFORE, THE HONORABLE STEVEN L. MICHELS REQUESTS DISMISSAL OF THE COMPLAINT AGAINST HIM.

Respectfully submitted this 24th day of October, 2001.

A handwritten signature in black ink, appearing to read 'Steven L. Michels', written over a horizontal line.

STEVEN L. MICHELS