

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

FILED
AUG 27 2001

COMMISSION ON JUDICIAL CONDUCT

3
4 In Re the Matter of
5 Honorable Steven Michels
6 Sunnyside Municipal Court
7 401 Homer Street
8 Sunnyside, WA 98944-1354

No. 2969-F-92

STATEMENT OF CHARGES

8
9 **I. BACKGROUND**

10 The Honorable Steven Michels ("Respondent") is now, and was at all times referred
11 to in this document, Judge of the Sunnyside Municipal Court and Judge Pro Tempore for
12 the Toppenish Municipal Court. On June 12, 1998 and March 1, 1999, complaints were
13 filed with the Commission on Judicial Conduct that led to the current charges. On January
14 11, 2000, the Commission on Judicial Conduct sent Respondent a letter informing him that
15 the Commission was commencing initial proceedings against him. A Statement of
16 Allegations was enclosed and a response was invited. Respondent responded to the
17 Statement of Allegations on February 3, 2000. On June 6, 2001, the Commission sent
18 Respondent an Amended Statement of Allegations and invited a response, which
19 Respondent submitted on July 11, 2001.

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

21 I. Respondent engaged in a pattern or practice of presiding as judge in
22 Toppenish Municipal Court cases in which he has also been appointed as defense
23 counsel:

- 24 (a) *Toppenish v. Henry Logie*, C00002180. Respondent was appointed
25 as defense counsel on or about July 24, 1996. On September 23,
26 1998, the defendant was found guilty of DUI and sentenced to 365
27 days with 320 days suspended. Respondent presided as judge at a
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hearing on November 4, 1998 and reviewed the defendant's request for "release for orientation" the following day. The defendant failed to appear for a review hearing before the regular judge on December 14, 1998, and the hearing was reset for January 27, 1999, before Respondent. Respondent presided as judge at that hearing and continued the case for 30 days.

(b) *Toppenish v. Marshall Hannigan*, C00003677. Respondent was appointed as defense counsel on or about July 7, 1997. On November 4, 1998, Respondent presided as judge at a hearing at which he entered a finding of guilty on one count and guilty to a lesser charge on the second count and imposed a \$850 fine with \$400 suspended.

(c) *Toppenish v. Evan C. DoubleRunner*, C00004013. The defendant was charged with DUI. Respondent was appointed as defense counsel on or about October 19, 1997. Thereafter, the defendant applied for a deferred prosecution. Respondent presided as judge at a review hearing on March 18, 1998 and continued the case for four weeks. Respondent presided at another review hearing on November 4, 1998 and continued the case for 60 days. The defendant did not appear at the next scheduled hearing, and the regular judge issued a bench warrant on January 15, 1999. On January 27, 1999, Respondent presided as judge a hearing at which he recalled the warrant and set a warrant fee of \$100.

(d) *Toppenish v. Anselmo Cantu*, C00004396. The defendant was charged with driving with a suspended license. Respondent was appointed as defense counsel on or about July 14, 1998. The defendant pleaded guilty on July 29, 1998. Sentencing was initially set before the regular judge, but on October 20, 1998, was reset

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before Respondent for November 4, 1998. Respondent presided as judge for the criminal calendar that day. He continued this defendant's sentencing for a month and informed the defendant that he could not get a driver's license for two years.

(e) *Toppenish v. Jose A. Sandoval*. In cause number C00003683, Respondent was appointed as defense counsel on or about October 21, 1997. In cause numbers C00003193, C00004164, and C00004165, Respondent was appointed as defense counsel on or about January 8, 1998. In cause numbers C00004276, C00004277, C00004278, Respondent was appointed as defense counsel on or about January 29, 1998. In cause number C00004451, Respondent was appointed as defense counsel on or about March 31, 1998. Respondent presided as judge at a hearing on all of these cases on November 4, 1998 and ordered that the defendant be committed "on all charges."

(f) *Toppenish v. Jesus R. Gudino*, C00004890. Respondent was appointed as defense counsel on or about September 15, 1998. On November 4, 1998, Respondent presided as judge at a hearing at which he found the defendant guilty of negligent driving, placed him on two years probation, and imposed a 30 day suspended sentence and a \$1,470 fine, with \$650 suspended.

(g) *Toppenish v. Aileen H. Jimmy*, C00005051. Respondent was appointed defense counsel on or about August 31, 1998. The defendant entered into a stipulation without finding and was placed on probation. She later failed to appear at a hearing, and a warrant was issued for her arrest. On September 13, 1999, Respondent presided as judge at the hearing to clear that warrant and ordered the warrant recalled.

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- (h) *Toppenish v. Victoria J. Napoleon*, C00005212. The defendant was charged with DUI. Respondent was appointed defense counsel on or about November 24, 1998. Shortly thereafter, the defendant petitioned for a deferred prosecution. Respondent presided as judge at a hearing on January 27, 1999, found that the defendant had an evaluation, and continued the case for 30 days.
- (i) *Toppenish v. Earl N. Patrick*. In C00005923, Respondent was appointed as defense counsel on or about November 18, 1999. In C00005879, Respondent was appointed as defense counsel on or about September 29, 2000. Respondent presided as judge on an FTA/bail hearing in both cases on February 20, 2001. Respondent set bail at \$600 in one case and \$1100 in the other and ordered the defendant held for the regular judge.
- (j) *Toppenish v. Santos Rivas*, C00006564, C00006565, C00006566. Respondent was appointed defense counsel on or about August 17, 1999. On September 13, 1999, Respondent presided as judge at a hearing at which he entered findings of guilty on five counts, sentenced the defendant to 90 days with 88 days suspended, and imposed fines totaling \$3675 with \$1550 suspended.
- (k) *Toppenish v. Juan A. Salcedo*, C00006982. Respondent was appointed as defense counsel on or about April 20, 2000. The defendant failed to appear for a scheduled hearing on August 9, 2000, and a bench warrant was issued. The regular judge set bail at \$1000 bail, with \$100 warrant costs. An FTA hearing was set before Respondent for February 22, 2001. Respondent conducted a hearing by telephone. He set bail at \$2500 and ordered the defendant held for the regular judge.
- (l) *Toppenish v. Collette R. Patrick*, C00007555. Respondent was

1 appointed as defense counsel on or about May 25, 2000. The
2 defendant failed to appear at a hearing on January 31, 2001. The
3 regular judge issued a bench warrant and set bail at \$500 with \$100
4 warrant costs. The case was set for an FTA hearing before
5 Respondent on February 20, 2001. Respondent conducted that
6 hearing by telephone. He ordered the defendant held for the regular
7 judge and continued bail at \$600.

8 II. Respondent engaged in a pattern and practice of accepting guilty pleas
9 without obtaining proper written plea statements from the defendant as required by law in
10 numerous cases, including *Toppenish v. Selena Kay Fox*, C00008447 (February 28, 2001);
11 *Toppenish v. Rafael Garcia Hernandez*, C00008481 (February 27, 2001); *Toppenish v.*
12 *Pascal Gutierrez*, C00008439 (February 27, 2001); *Toppenish v. Marvin Patnode*,
13 C00008484 and C00008486 (February 26, 2001); *Toppenish v. Sara K. George*,
14 C00008441 (February 26, 2001); *Toppenish v. Michele Wak Wak*, C00007864 (February
15 26, 2001); *Toppenish v. Jonathan Untuch*, C00008480 (February 20, 2001); *Toppenish v.*
16 *J. Asuncion Cortez Gomez*, C00008478 (February 20, 2001). The same forms (captioned
17 "Defendant's Rights, Plea, Request for Jury/Non Jury Trial, and for an Attorney") are used
18 both for guilty and not guilty pleas. There are no spaces on the form for listing the
19 elements of the crime or the factual basis for the plea.

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21 **III. BASIS FOR COMMISSION ACTION**

22 The Commission has determined that probable cause exists to believe that
23 Respondent has violated Canons 1, 2(A), 3(A)(1), 3(D), 5(C)(1) and Application section
24 (A)(2)(b) preceding Canon 1 of the Code of Judicial Conduct (CJC) which state:

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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.

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) Judges should be faithful to the law and maintain professional competence in it

(D) Disqualification.

- (1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:
 - (b) the judge previously served as a lawyer

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CANON 5
Judges shall regulate their extrajudicial activities
to minimize the risk of conflict with their
judicial duties.

(C) Financial Activities.

(1) Judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties or exploit their judicial position.

APPLICATION OF THE
CODE OF JUDICIAL CONDUCT

(A) Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions . . . is a judge within the meaning of this Code. All judges should comply with this Code except as provided below.

(2) . . . (b) A person who has been a pro tempore judge should not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by the Rules of Professional Conduct.

IV. RIGHT TO FILE A WRITTEN ANSWER

In accordance with CJCRP 20, Respondent shall file a written answer to this Statement of Charges with the Commission and serve a copy on disciplinary counsel within twenty-one (21) days after the date of service of the Statement of Charges. As provided by CJCRP 21(a), failure to timely answer shall constitute an admission of the factual allegations. In the event Respondent fails to answer within the prescribed time, the Statement of Charges shall be deemed admitted. The Commission shall proceed to determine the appropriate discipline.

DATED this 27th day of August, 2001.

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON



David Akana
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