BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In re the Matter of: HONORABLE A. EUGENE HAMMERMASTER, Judge Sumner and Orting Municipal Courts, Pierce County, Washington	CJC NO. 3210-F-94 RESPONSE TO STATEMENT OF CHARGES

COMES NOW, A. EUGENE HAMMERMASTER, and responds to the Statement of Charges in the above-captioned matter and denies that there has been any violations of the Code of Judicial Conduct.

I. RESPONSE TO BACKGROUND

The statement as relates to the previous proceeding appears to have no relevance to the pending proceeding and I would ask the Commission to consider if it was done to inflame and prejudice the Commission. However, I am not requesting those prejudicial statements be stricken, but that they be

amplified to reflect that portion of the prior proceeding with which the Commission staff has failed to be in compliance.

PRIOR PROCEEDING. Specifically, the prior Court Order required the Commission to monitor my probation and appoint a Judicial Mentor. The Commission, through its staff, has not monitored my probation. In addition, the Commission has failed to appoint a mentor in a timely fashion, to-wit, not until more than one (1) year into my two (2) year probation period had already passed and, at the time the mentor was appointed, Commission staff had, apparently, already decided to bring new Charges. In addition, the mentor has now been told there is no reason for him to further act as a mentor. See Exhibits "1" and "2", letters from Judge Gary Utigard. The Exhibits are a follow-up to the conversation the mentor had with the Commission staff after being first appointed wherein he was told "there was nothing for [him] to do as Judge Hammermaster would not be susceptible to change".

I would request the Commission determine if the appointment was a spurious pretense as the Mentor was allowed to be involved with me for only about ninety (90) days. It is part of my defense that there has been a failure to monitor the probation and failure to appoint a mentor and comply with

the prior orders of the Commission and the Supreme Court in regards thereto.

In addition, I also reserve the right to request the Commission to amend this proceeding to a CJCRP Rule 29 Compliance proceeding, as there is an Order of Discipline in place as set forth in Rule 29. Said Rule appears to mandate that in such cases, the appropriate procedure is a Compliance Proceeding.

The statement "Wilkeson/South Prairie ceased to engage Respondent as Judge as of January 1st, 2001" is also a statement that is misleading, inaccurate, and/or false. I retired as the Judge of Wilkeson/South Prairie Municipal Court one (1) year prior to the completion of my four (4) year term. Wilkeson/South Prairie Municipal Court did not "cease to engage" me. In fact, the cities of South Prairie and Wilkeson presented me a plaque in recognition of their appreciation of my service to those communities. A copy of the inscription on the plaque is attached hereto as Exhibit "3". The statement in regards to resuming my Judicial duties in Orting and the incorporating of the prior opinions of the Commission and State Supreme Court also appears to be relevant only if the pending proceeding is to be a Rule 29 Compliance Proceeding.

I request the Commission to consider whether there are ulterior, and irrelevant motives for the making of these misrepresentations, i.e., inflammatory and prejudicial purposes.

In responding to Paragraph 1.B., while I did, through Counsel, request an extension of time, it was not indefinite but to a date certain, to-wit, September 1st, 2001. See Exhibit "4" (Response to D.C.). This appears to be another example of a lack of fairness and mischaracterization of the facts. Because of the reference to the former proceedings and because of the fact that the Commission was aware, at the time of the former proceedings of all of the issues being raised by the present charges, I will include in my Response and Defense statements applicable thereto.

I have, to the best of my knowledge and understanding, fully complied with all requirements of the prior Censure and Supreme Court decision and was of the opinion that the probationary period was ongoing in a fashion that was satisfactory to the Judicial Conduct Commission and its staff.

The previous proceeding required the undersigned to complete judicial education courses in criminal procedure, ethics and diversity. The courses were to be pre-approved by

the Commission. At the direction of the Commission, I attended the following classes through the National Judicial College, Reno, Nevada, although one (1) of the Judicial College courses was held in Minneapolis, Minnesota:

1. Ethics for Judges - 06/07/2000-06/08/2000, Minneapolis, MN;

2. Constitutional Criminal Procedure - 07/10/2000-07/14/2000, Reno, Nevada; and

3. Recognizing and Handling Bias in your Court - 08/21/2000-08/22/2000, Reno, Nevada.

See Exhibit "5" attached hereto.

Those classes were attended primarily at my personal expense (excepting a portion that was covered by scholarships), although the Supreme Court reversed the Judicial Conduct Commission's decision in that regard. The Judicial Conduct Commission had directed that I was to personally pay the costs of the classes myself. The Supreme Court reversed and said I could request the cities to cover those costs. Although the Supreme Court gave me that option, I chose to abide by the decision of the Judicial Conduct Commission and pay those costs at my personal expense. In addition to attending those classes, per the request of the Commission, I attended the DMCJA Conferences, and the

education courses provided thereto in May of 2000 and May of 2001.

The Judicial Conduct Commission ordered the appointment of a mentor, which was affirmed by the Supreme Court. The Commission's Order required that I meet with the mentor in a manner prescribed by the Commission. No mentor was appointed for approximately eighteen (18) months from the date of the Supreme Court Order (almost 3 years from the date of the Judicial Conduct Commission Order) and approximately one (1) year after my probation period ended and while I was mid-way through the probationary period. In November, 1999, the Judicial Conduct Commission Staff asked for my suggestions as to the appointment of a Judicial Mentor (Exhibit "6" attached hereto) and I immediately responded to that inquiry (Exhibit "7"). No further communication in that regard was received until May 2nd, 2001, when Judge Gary Utigard was appointed as Mentor, approximately one (1) year after my return to the Bench and mid-way through my probation period (Exhibit "8").

At no time was I contacted by the Commission or its staff with any concerns that needed to be addressed as far as my probationary period was concerned. It was my understanding the Censure and Supreme Court Order required that my probation

be monitored in a manner prescribed by the Commission and that any concerns would be called to my attention so that I might address them in a form acceptable to the Judicial Conduct Commission and/or its staff. The Commissions Order, affirmed by the Supreme Court, also provided that my involvement with the Judicial Mentor was to be "in a manner prescribed by the Commission". To date, no such instruction or direction has been received. The foregoing, along with the recent termination of the Mentor, appears to be a clear violation of the prior Supreme Court Order and the Order of the Commission itself.

The Judicial Conduct Commission staff required that all Court proceedings be taped and recorded audibly. While that was taking place in Sumner Municipal Court as a Court of record, the Courts of Orting and South Prairie/Wilkeson did not require recording because of the population size of those communities. I purchased recording equipment for those Courts at my own personal expense and obtained Commission staff approval of that equipment and its use. That recording equipment continues in use as directed by Commission staff.

Commission staff obtained tapes of the first two (2) or three (3) Court sessions upon my return to the Bench.

Following that initial request, the staff obtained no further tapes until late April or early May of 2001. At no time prior to the filing of the allegations was there any contact by the Commission or its staff of the undersigned as relates to concerns of the nature raised by the charges. The procedures and forms used in the Courts of Sumner, Orting, and South Prairie/Wilkeson (with one or two exceptions) are identical to those that have been used in those Courts over the past many years and the Commission and its staff was aware of those forms and procedures and were all addressed or reviewed by the Commission and its staff as part of the prior proceeding.

The prior proceeding specifically challenged the Guilty Plea Statement and as a result of that decision the Guilty Plea Statement was revised to conform to the Judicial Conduct Commission's decision. The prior proceeding did not direct, nor instruct modification or change to any other forms.

It further was my understanding that the Commission staff, having previously examined all procedures and forms that were ongoing at the time of the first proceeding, had no objections to those procedures and forms. Again, there has been no contact from the Commission or its staff since my return to the Bench and during the probation period. It was

my understanding that I would be contacted by the Commission or its staff as part of their monitoring of probation as to any concerns or issues that needed to be addressed.

Commission staff apparently chose either not to monitor as mandated, or chose not to allow me to address any concerns as part of my probation. Likewise, I was not permitted, until recently, the opportunity to counsel with a Judicial Mentor on any of the issues as no Judicial Mentor was appointed. I immediately met with Judge Utigard following his appointment as Judicial Mentor. Since the appointment I counseled with Judge Utigard and in accordance with his counsel and advice, have come into full compliance with any and all mandates of the Judicial Conduct Commission and its staff as raised by the allegations and the Charges.

When I first met with Judge Utigard, he inquired of me as to whether or not there had been any contact from the Commission and/or its staff relative to matters that required mentoring and counseling. I told him there had been none. Judge Utigard directed that, as issues developed, we would counsel on those issues in an effort to resolve them to the satisfaction of the Commission or its staff. When I became aware that the Commission had requested tapes and forms I

immediately contacted Judge Utigard so that he might inquire of staff as to any issues that would require mentoring (see Exhibit "9"). It also is my understanding that Judge Utigard, upon his appointment, contacted the Commission and was given no specific instruction nor direction as to what his mentoring was to be. In fact, it is my understanding that he was told, in essence, that there was nothing for him to do as I would not be receptive to change. This is untrue as I have made all changes requested by the Commission and/or its staff as soon as I became aware of them.

Also, the City of Sumner contacted the Commission on one (1) or more occasions inquiring as to when a Judicial Mentor was going to be appointed. The Cities have been very supportive, with the City of Sumner providing funds for the retaining of an Attorney in the first proceeding as well as the present proceeding. I am sure they were anxious to have Sumner Municipal Court monitored and operated in a way that avoided a repeat proceeding. That was my intent also and continues to be my intent. I would summarize the foregoing by stating that it does not seem to be fair and, perhaps, may even suggest bias or prejudice, to not advise me of conduct during the probationary period that needs be addressed and not

be given the opportunity, as part of my probation, to correct and/or change anything that is unacceptable. It appears that the proper proceeding that should have been brought was a Rule 29 Compliance Proceeding and I reserve the right to make that request.

All procedural and form issues (as well as the other substantiative issues) have been changed and modified to meet the requirements of the Commission and its staff. That process has taken place in accordance with the recommendations of the Judicial Mentor, Judge Utigard. It was his recommendation to make the changes, regardless of whether or not it was legally necessary so to do. I agreed with him as it always was and is my intent to meet the requirements of the Judicial Commission and its staff.

As a further defense I respond by alleging that the Commission staff may be improperly seeking to micro-manage the Court. I understand this is also the opinion of the Court Clerks for Sumner and Orting.

II. RESPONSE TO FACTS SUPPORTING CHARGES

II.A. Responding to Allegation II.A., I deny that I have violated Canons 1, 2(A) and 3(A)(1) of the Code of Judicial Conduct and deny that I have engaged in a pattern and practice

of violating the Criminal Defendants fundamental due process and other constitutional and statutory rights and protections and deny that I have demonstrated a failure to maintain competence in the law during the period of time following the resumption of my judicial duties since April, 2000.

PLEADING FORMS.

1. I deny that I have, as a regular practice, approved and/or used forms and court documents which do not conform to the requirements of the State Supreme Court, applicable statutes and court rules, and which violate the due process rights of defendants. No forms were provided in the "Statement of Charges" although it states they are attached as Exhibit A(i) and A(ii) and Exhibit B. I wrote to the Commission requesting the Exhibits (See Exhibit "10") and was advised by a letter dated October 23rd, 2001 that there are no Exhibits (See Exhibit "11"). Therefore, I can make no further response and am proceeding on the basis that the Commission will not be permitted to present those forms at the hearing.

ADVICE OF RIGHTS.

2. I deny that I have a regular practice of failing to properly advise defendants of their rights or to comply with

constitutional due process requirements at arraignments. I deny that I consistently fail to affirmatively advise defendants that they have a right to counsel and to a jury trial, and deny that I require defendants pleading not guilty to sign a document waiving their rights to counsel and to a jury trial without explaining those rights to them.

The following procedures are customarily and repeatedly followed:

(a) Exhibit "12" is mailed to the Defendant prior to the Defendant appearing. The Defendant, in Sumner, meets with the Public Defender where he is again advised of his rights and signs a Statement of Rights form (Exhibit "13"), which is to be filed and thereby becomes a part of the record. In Orting, a similar form is given to the Defendant and is now being signed by the Defendant and filed as part of the record.

If the Defendant enters a plea of not guilty, the Defendant was given the Statement On Plea of Not Guilty which also references rights to an Attorney. This form is no longer being used.

If the Defendant enters into a stipulation, then he reads and signs the form designated Exhibit "14" attached hereto.

In addition, the Public Defender in Sumner has advised the Defendants of their rights. See Statement of Jeff Day designated as Exhibit "15" and attached hereto.

CrRLJ 4.1(2) provides for the advisement of the right to trial by jury and the right to be represented by a lawyer and that advisement is to be "on the record". It is submitted that the foregoing processes meets the requirements of that rule, as "on the record" includes not only verbal communications, but also notations on the docket, documents provided to the Defendant, copies of documents filed, etc. A review of the Washington State Judge's Bench Book of Criminal Procedure for Courts of Limited Jurisdiction at 1100.11A(3) (P.212) notes that the term "on the record" was a "somewhat vague term that was deliberately chosen to allow flexibility in local Court practices". This appears to be an example of Commission staff micro-managing the Court.

It is the opinion of the undersigned that providing written documentation that a Defendant can take with him and/or read ahead of time is of substantially greater benefit to a Defendant than an oral recitation in Court as a Defendant is usually of a frame of mind where verbal statements are not really remembered or retained.

Also, where a Defendant enters a Plea of Not Guilty, the matter is then set for a pre-trial hearing approximately one (1) month after the arraignment, which gives the Defendant even additional time to make decisions on counsel and jury. Again, even though a Defendant may have signed a jury waiver (which form is not any longer being used) a late request for a jury trial (more than 10 days) is rarely if ever denied.

I deny the cases listed in the Charges illustrate or support the alleged behavior and the above-referenced Charge. To the extent such cases may demonstrate a violation of law, constitutional right or procedural rule, the same are atypical and not representative of my normal procedures, conduct, and/or application of law.

Nevertheless, in accordance with my intention to fully comply with the Commission and its staff, I have commenced using the verbal arraignment script set forth in the newly published Criminal Procedure Bench Book for Courts of Limited Jurisdiction. (See Exhibit "16" attached hereto).

GUILTY PLEAS.

3. I deny that I have engaged in a regular practice of failing to properly accept guilty pleas from pro se defendants. I deny that I have consistently failed to advise

defendants of the elements of the crimes to which they plead guilty and deny I have consistently failed to determine their understanding of the proceedings. I deny that I accepted guilty pleas without obtaining an adequate factual basis for the plea and without taking the pleas in the manner required by law. I deny that I fail to warn pro se defendants of the maximum penalty or mandatory minimums to the crimes to which they plead guilty. I further deny that the cases listed in the Charges illustrate or support the alleged behavior and above-referenced charges. To the extent such cases may demonstrate a violation of law, constitutional right or procedural rule, the same are atypical and not representative of my normal procedures, conduct, and/or application of law.

The facts as relate to each crime are always discussed with the Defendants and that discussion makes it clear that they are aware of the elements and that there is a factual basis for the plea. By way of example, "Driving While License Suspended in the Third Degree" does, in actuality, set forth the elements of the offense and the Defendant would acknowledge that he was operating his motor vehicle on the date in question when his license was, in fact, suspended. The facts, including statements in the police report, are

always verbally discussed with the Defendant. The Defendant is always advised of the maximum and minimum penalties. The maximum and minimum penalties are set forth in the written statement and is also verbally stated. On a rare occasion there may have been an oversight to make the appropriate statement on the Guilty Plea Form and certainly is not a regular practice. It is my regular practice to advise the Defendants as to minimum and maximum penalties.

This procedure has been reviewed with Judge Utigard and as a result, the procedures have been further revised, including the Guilty Plea form, in accordance with his counsel and approved by him, as well as the respective City Attorneys and Public Defenders. The revised Guilty Plea form is attached as "Exhibit 17".

As far as "sufficient facts" are concerned, it is the opinion of your Respondent that the Defendants clearly admit and acknowledge sufficient facts establishing the offense and again, by way of example, a Defendant who drives without a valid license acknowledges that he or she was driving without a valid license, and if the Defendant stated they never received the suspension notice, substantial inquiry takes place as to whether or not there was proper compliance by the

State of Washington in sending the notices. In most instances it is determined that the notices were sent by the State of Washington to the last address of the Defendant which usually was a different address than the Defendant's then current address, or that someone at that address failed to give the notice to the Defendant.

FAILURE TO COMPLY HEARINGS.

4. I deny that I have a regular practice of failing to properly conduct Failure to Comply Hearings with pro se defendants. I deny that I fail to advise pro se defendants that they have a right to counsel at such hearings, that they have a right to contest the allegations, and that they have a right to a hearing regarding whether the violation was committed. I deny that I shift the burden of proof as to whether a violation occurred to such pro se defendants on a regular basis. I deny that, as a regular pattern or practice, that I improperly revoke deferred and suspended sentences for pro se defendants for failure to pay, despite their inability to pay monetary fines or costs. I further deny regularly failing to give pro se criminal defendants credit for jail time served in pursuing delinquent monetary payments by those defendants. I deny that I threaten to require that defendants

pay $50.00 a day for each day they are incarcerated as a result of being unable to pay fines. I further deny that the cases listed in the Charges illustrate or support the alleged behavior and above-referenced charges. To the extent such cases may demonstrate a violation of law, constitutional right or procedural rule, the same are atypical and not representative of my normal procedures, conduct, and/or application of law.

Inquiry is always made of the Defendants concerning allegations that have been made and full opportunity is given to the Defendants to address the compliance issues. No shifting of burden of proof takes place. It is a colloquy and discussion between the Defendant and the Court.

Deferred and suspended sentences are not improperly revoked for failure to pay. One of the conditions of a suspended or deferred sentence is the payment of a monetary assessment (as part of a stipulated plea bargain with the City). Upon failure to meet that condition the compliance requirements have not been met. The Court often, at the time the Defendant enters into the agreement, calls to the attention of the Defendant that one of the conditions of fulfilling the stipulation agreement, which usually involves

a reduced charge or dismissal of the case, includes the making of the monetary payment.

As far as giving Defendants monetary credit for jail time served, normally no such credit is given for the jail time served resulting from a Bench Warrant being issued for failure to appear. Upon the Defendant appearing, and in an appropriate case, the Court would allow the Defendant to commence serving a jail sentence in lieu of a monetary payment. However, little is to be gained nor is there any benefit to society by the Defendant remaining in jail. A better approach, which the Court approves and has employed, is community service in lieu of payment of fine where the Defendant does not have the ability to work and pay his fine.. The Court is also sensitive to jail concerns both as far as costs to the Court and the City and jail space itself. To give a Defendant credit for being in jail, requires the City to pay additional funds to the jail and does not appear to be of benefit to either the City or the Defendant. It is noted that Orting does not have a jail and uses either the Puyallup jail or the Buckley jail and pays a fee for each day an Orting prisoner is in jail. Likewise, the City of Sumner pays Forty-Five Dollars ($45.00) per day per prisoner to use the Puyallup jail and the

Puyallup jail often is full and not available for allowing a Defendant to sit out a monetary payment by credit for time in jail. Also, the jails, when they become full, often release defendants regardless of what the Court order might have been.

Again, however, the more significant reason would relate to a lack of benefit of having a Defendant sit in jail when that Defendant could be out and either employed and/or doing community service. I also am unaware of any mandatory requirement that the defendant be allowed to serve his monetary fine in jail.

As to the Fifty Dollars ($50.00) per day assessment, on occasion (not as a regular practice), the Court calls to the Defendant's attention the right the Court has to assess a penalty of Fifty Dollars ($50.00) per day pursuant to RCW 10.01.160 which provides as follows:

> "Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed fifty dollars per day of incarceration."

It is only on rare occasions that the Court has advised the Defendant of that option that is available to the Court and at no time during the probation period has the Court required a Defendant to pay Fifty Dollars ($50.00) per day for

each day of incarceration. I am aware that some Courts do actually assess the jail incarceration penalty as part of their routine practice.

Your Respondent has reviewed these allegations with the Judicial Mentor as all of these hearings took place during the probationary period and is following the recommendations of Judge Utigard, including permitting a Defendant to serve jail sentence in lieu of paying the fine. However, it is hoped that the present process of allowing the Defendants the option of entering into a new payment agreement and/or community service would be acceptable. It is also again noted that failure to pay constitutes a violation of the terms of a suspended sentence. It also appears the foregoing may be an example of micro-managing the Court.

DEFERRED SENTENCE HEARINGS.

5. I deny that I have a pattern or practice when revoking continuances or deferred sentences of conducting significant hearings and making findings adverse to Defendants in matters that Defendants had a due process right to contest, in the absence of the Defendant. I further deny that the cases listed in the Charges illustrate or support the alleged behavior and above-referenced charges. To the extent such

cases may demonstrate a violation of law, constitutional right or procedural rule, the same are atypical and not representative of my normal procedures, conduct, and/or application of law.

The issue here relates to situations where Defendants have previously pled or been found guilty and received deferred sentences and/or deferred findings having been entered and/or an agreed stipulation having been accepted. In these situations it is the opinion of the undersigned that the initial proceeding resulted in the equivalent of a determination of guilt and imposition of sentence was deferred during the probation or compliance period. When there is an allegation of non-compliance a notice is sent to the Defendant to appear to address that issue. If the Defendant fails to appear a tentative finding is made that there appears to have been a failure to comply (a Probable Cause type of hearing) or that there appears to have been a violation of probation conditions. Then a second notice is sent to the Defendant requesting an appearance for final disposition/sentencing.

The reason for this two (2) step process is to give the Defendant a second opportunity to appear and address the issues and not have a Bench Warrant issued. The other

alternative would be, to immediately issue a Bench Warrant on the Defendant's failure to appear in response to the first notice. Every effort is made by the Court to give the Defendant a second opportunity and sometimes even a third opportunity to appear without having a Bench Warrant issued.

IN-CUSTODY HEARINGS.

6. I deny that I have a regular practice of conducting unscheduled in custody hearings for pro se defendants charged by the City of Orting in my private law office located in Sumner and in violation of RCW 3.50.110 and Article 1, Section 10 of the State Constitution.

I deny that improper hearings were conducted in my private law office on the dates listed in the Charges.

At the conclusion of your Respondent's suspension period, the Judicial Conduct Commission staff prohibited me from returning to the Bench in Orting and South Prairie/Wilkeson until the issues relating to recording and the holding of hearings in my office were addressed to their satisfaction. A Commission Investigator came to my office, viewed the room where the hearings would be held, identified the location of the chair where the Defendant would sit, the location of the chair where the Judge would sit, and the placing of the

recording equipment, including the microphones. The set up of the room was approved by the Commission staff and I was allowed to return to the Bench in Orting and South Prairie/Wilkeson. At no time over the past year has there been any suggestion or indication that this conduct and practice was inappropriate. See Letter of Approval, Exhibit "18" attached hereto.

Further, it was and is my understanding the City of Orting as well as South Prairie/Wilkeson had met the requirements of RCW 3.50.110 many years ago (perhaps as many as 30 years or more) because it was at the City's request that I agreed to hold such hearings in my office. Following the request that those hearings be held in my office, the respective Cities also asked to hold those hearings in the Sumner Courtroom if the Defendants were brought to that Courtroom while the Sumner Municipal Court was in session. In fact, the previous Judicial Conduct proceeding involved Orting cases held in the Sumner Courtroom, and this procedure was never criticized.

When the process was started more than thirty (30) years ago at the City's request, I believe all applicable laws were examined and followed. Nevertheless, to address and clarify

the issue, the City of Orting has adopted the attached ordinance (Exhibit "19") to confirm what the City believes took place many years ago; and it should also be noted that, on occasion, hearings are also held at the jails outside the Cities of Orting and Sumner.

INDIGENT APPOINTMENTS.

7. I deny that I had a regular practice of violating indigent defendants' constitutional and statutory rights to the appointment of counsel, by conducting inquiries about the defendant's personal financial information orally in open court, by denying court appointed counsel to defendants who statutorily qualified by charging more for recoupment than the court was charged for such services, and in other ways that violated the mandates of RCW 10.101 *et seq*. I deny that the conduct of such hearings was demeaning and humiliating toward the defendants. I further deny that the cases listed in the Charges illustrate or support the alleged behavior and above-referenced charges. To the extent such cases may demonstrate a violation of law, constitutional right or procedural rule, the same are atypical and not representative of my normal procedures, conduct, and/or application of law.

The Court has followed all necessary procedures and requirements in providing Court appointed Attorneys. The procedure in open Court is based on 1) that it is the Court's primary responsibility to appoint counsel; 2) that the statements of the Defendants must be under oath. There has been no denial of Court appointed counsel to those who qualify unless due to misstatement by the Defendant as to the Defendant's income and/or other facts. In addition, there has been no intent to assess an amount greater than what the Court is charged for services. If such an assessment has taken place, it is a rare oversight and not intentional nor is it a regular practice.

There is also an allegation of "in other ways that violated the mandates of RCW 10.101 *et. seq.*" but because those are not set forth I am not able to respond thereto.

I have discussed this issue with the Judicial Mentor and will comply with all requirements and mandates of the Commission and its staff in regards to the issue of appointment of counsel. The procedure now in use, as approved by Judge Utigard, is to have counsel be appointed by the Court's designee. Recoupment issues are being addressed at the conclusion of each case.

PROBABLE CAUSE HEARINGS.

8. I deny that, as Judge of South Prairie and Judge of the City of Orting I failed to conduct timely probable cause hearings for defendants taken into custody by law enforcement without a warrant as constitutionally required by *McGlaghlin v. Riverside*. I deny that, as a consequence, defendants were held in custody for longer than forty-eight (48) hours permitted under the constitution and case law. It further appears this charge is not properly brought as the Allegations only stated that I failed to conduct timely probable cause hearings for defendants taken into custody by law enforcement without a warrant and did not provide the rest of the detail set forth in the Charges and I have not, therefore, been permitted to respond to this Charge as an Allegation. It should not be considered nor charged until I have been given the opportunity to respond to it as an allegation. I further deny that the cases listed in the Charges illustrate or support the alleged behavior and above-referenced charges. To the extent such cases may demonstrate a violation of law, constitutional right or procedural rule, the same are atypical and not representative of my normal procedures, conduct, and/or application of law.

II.B. Responding to Allegation II.B., I deny that I engaged in a pattern and practice of issuing illegal orders beyond my judicial authority, and deny that I failed to maintain competence in the law, and deny that I failed to comply with the law.

1. I deny that I ordered defendants "banished" from the jurisdiction. I further deny that the cases listed in the Charges illustrate or support the alleged behavior and above-referenced charges. To the extent such cases may demonstrate a violation of law, constitutional right or procedural rule, the same are atypical and not representative of my normal procedures, conduct, and/or application of law. In certain situations, a Defendant may, as a condition of probation or of a suspended sentence, be prohibited from coming into the City of Sumner (or Orting) for a limited period of time and those prohibitions arise out of the Defendant's conduct which often involve domestic violence and no contact order issues. As indicated, those restrictive conditions of a suspended sentence are for a limited period of time and usually allow the Defendant to come to the City for Court related and employment related purposes. Furthermore, at no time did I ever use the words "banish" which is arguably derogatory and

undignified language to use in any proceeding. Its use in the Charges herein is further example of not being truthful to the record and suggests possible prejudicial bias.

Cities like Tacoma restrict Defendants from "drug zones" and "prostitution zones" which probably are larger in area than the small towns of Sumner and Orting. Also the case of *State v. Sutley*, 1990 Ohio App. Lexis 5520 (1990) is cited in the Domestic Violence Desk Book as an example where a Defendant was prohibited from a "Quadrant of the City" which is one-fourth (1/4th) of a City's area which, in most cities of our State would exceed the size of Sumner or Orting. The same Desk Book approves "places frequented by the victim", which in a small community would include the entire town. Cases cited by the Commission do not constitute a "order of banishment" but a condition of the suspended sentence. It is noted that the *Voorhees* and *Creech* cases, which were listed in the Statement of Allegations, were eliminated from the Statement of Charges. *Voorhees* and *Creech* were domestic violence cases, which suggest Commission staff does not object to Defendants being prohibited from coming into Sumner and Orting in Domestic Violence cases. This again appears to be an example of micro-managing the court with the Commission

staff deciding what a Judge can and cannot do in regards to suspended sentences. Eliminating those cases also may indicate a bias as they appear to be supportive of my position.

Nevertheless, the Respondent, having reviewed this allegation with Judge Utigard, will comply with the mandates of the Judicial Conduct Commission and/or its staff even if I were to be of the opinion that such conditions of probation were appropriate. Because of the allegations, henceforth a Defendant will not be prohibited from coming into the City as a condition of suspension.

DWLS SENTENCING.

2. I deny that I have regularly ordered defendants as part of their sentences in driving while license suspended cases to divest themselves of an ownership interest in a motor vehicle while not validly licensed or insured. I further deny the Superior Court unequivocally reversed one such order in September, 2000 and deny that I wrongfully continued said practice. I further deny that the cases listed in the Charges illustrate or support the alleged behavior and above-referenced charges. To the extent such cases may demonstrate a violation of law, constitutional right or procedural rule,

the same are atypical and not representative of my normal procedures, conduct, and/or application of law.

It is the opinion of the undersigned that requiring a Defendant not to own an automobile while not licensed is a justifiable condition of suspension or probation aimed at preventing further criminal conduct. Clearly a Defendant with a suspended license who does not own an automobile is less likely to drive than one who does own or possesses an automobile. While your Respondent is familiar with the one Superior Court case that ruled to the contrary, discussions that I have had with other parties, i.e., Judges, City Attorney, etc. confirm that this was an unusual Superior Court ruling and the City Attorney chose not to proceed with a further appeal, although the City believed the Superior Court ruling would have been reversed on appeal.

However, this issue has also been reviewed with the Judicial Mentor and compliance with the requirements and/or mandates of the Judicial Commission and/or its staff will be met regardless of the appropriateness of the condition of suspension. Presently, such a condition of suspension is not being used.

COURTROOM DECORUM.

II.C. Responding to Allegation II.C., I deny that I have engaged in a pattern or practice of undignified courtroom demeanor with criminal defendants and deny that I subject them to rude and demeaning treatment. I deny that I repeatedly or inappropriately interrupt defendants; deny that I engage in protracted and repeated questioning of them regarding their inability to obtain employment or their reasons for violating the law or Court orders and I further deny the requiring of oral disclosures of personal information on the record regarding the exercise of their rights as defendants in a fashion which is humiliating, belittling, and abusive. I deny that I otherwise fail to conduct myself in a judicious and professional manner. I further deny that the cases listed in the Charges illustrate or support the alleged behavior and above-referenced charges. To the extent such cases may demonstrate a violation of law, constitutional right or procedural rule, the same are atypical and not representative of my normal procedures, conduct, and/or application of law.

Attached hereto are statements of Orting Court Clerk, Jean Miller (Exhibit "20") and Sumner Court Administrator Wendy Shook (Exhibit "21"), who have been in Court during some of the hearings referenced in the Charges, who disagree with

the Charges. It is submitted that the opinion of one who is in the Courtroom, aware of the actual demeanor and colloquy between the Court and the Defendant, is in a better position to evaluate the conduct than one who merely takes statements from a tape, which does not allow for the nuances and non-verbal responses and actions of the parties. It is also noted that most colloquy's were one-two minutes in length.

Nevertheless, these issues have been reviewed with Judicial Mentor, and I am following his recommendations in an effort to meet all requirements or mandates of the Commission or its staff. I also have made myself available to further address these matters but, to date, Commission staff has declined to meet with me or provide further direction to meet their requirements.

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III. FURTHER RESPONSE

I further deny that Probable Cause exists to believe I have violated Cannons 1, 2(A), 3(A)(1), and 3(A)(3) of the code of Judicial Conduct. Therefore, I pray that, the Charges be dismissed and held for naught or that in the alternative, the matter be converted to a Rule 29 Compliance Hearing.

RESPECTFULLY SUBMITTED, this 29th day of October, 2001.

A. EUGENE HAMMERMASTER
Sumner and Orting
Municipal Court Judge