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3 **BEFORE THE COMMISSION ON JUDICIAL CONDUCT**
4 **OF THE STATE OF WASHINGTON**
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FILED
JUL 13 2005
COMMISSION ON JUDICIAL CONDUCT

8 In re the Matter of) No. 4072-F-109
9 RICHARD B. SANDERS,)
Justice, Washington Supreme Court) **CORRECTED AMENDED**
10) **COMMISSION DECISION**

11
12 This matter came on for a fact-finding hearing before the Commission on Judicial Conduct sitting in
13 Kent, Washington on December 6 - 10, 2004. The Commission members participating as the fact-finding
14 panel for this matter were Wanda Briggs; Harold D. Clarke, III; Marianne Connelly; Antonio P. Cube; Judie
15 Fortier; Joel Penoyar; John A. Schultheis; Mike Sotelo; Josephine Townsend; Betsy Wilkerson; and Gregory
16 R. Dallaire, Presiding Officer.

17 Katrina C. Pflaumer of Seattle appeared as Disciplinary Counsel. Respondent was present and
18 represented by Kurt M. Bulmer.

19 The Commission heard and considered the testimony of witnesses, the stipulation of the parties
20 regarding admissions, the exhibits admitted into evidence, and the briefs and arguments of counsel.

21
22 **PROCEDURAL HISTORY**
23

24 This matter commenced when a complaint was filed with the Commission on March 19, 2003. On
25 May 29, 2003, the Respondent wrote a letter to the Commission in response to a news article that his tour may
26 have prompted a complaint to the Commission.

27 After preliminary investigation, a confidential Statement of Allegations was sent to the Respondent on
28 October 8, 2003. The Respondent replied on October 29, 2003. The original filing of the Statement of
29 Charges was held pending settlement negotiations until April 5, 2004. Respondent's Answer to the Statement

1 of Charges was received on April 28, 2004. By an order filed June 17, 2004, in a ruling on motions brought by
2 the Respondent, the Presiding Officer denied certain discovery requests. By an order filed August 27, 2004, in
3 a ruling on Motion for Summary Judgment brought by the Respondent, the Commission dismissed certain
4 affirmative defenses as a matter of law. By an order filed October 7, 2004, the Washington State Supreme
5 Court (pro tem) denied Respondent's Request for Discretionary Review of the June 17, 2004, Order.

6 At the commencement of the fact-finding hearing, the Commission accepted into the record a
7 Stipulation and Witness List filed December 6, 2004. After the fact-finding hearing, the Commission's Decision
8 was filed on April 8, 2005. Thereafter, Disciplinary Counsel and Respondent's Counsel filed various motions,
9 responses and replies related thereto. The Commission amended its decision by order dated May 27, 2005.

11 FINDINGS OF FACT

12
13 By letter dated December 17, 2002, the Respondent, along with the other Supreme Court Justices,
14 was invited to visit the McNeil Island Special Commitment Center for sexually violent predators. (ex. 200) The
15 invitation was extended on the letterhead of the African American Collective, a group of persons who were
16 committed at the Center. A resident, Andre Brigham Young, was identified as the contact person for the
17 Collective. (ex. 200) At the time of the letter and subsequent tour, Andre Brigham Young had a matter filed in
18 the Washington State Supreme Court. (ex. 180) The letter requested that the Justices "evaluate and
19 calculate" the application of RCW 79.01, et seq. through an on-site tour of the facility by conversing with the
20 residents and staff. (ex. 200) Subsequently, the Respondent replied to Andre Brigham Young (Sanders'
21 testimony, p. 1034) and, through his staff, initiated contact with the superintendent of the facility to make the
22 arrangements for touring the Center. (Sanders' testimony, p. 915) January 27, 2003, was established as the
23 date for the visit. (ex. 203) On January 8, 2003, the Respondent sent a memorandum to the other Supreme
24 Court Justices indicating that he had made arrangements for the visit. He requested anyone interested in
25 attending to get back to him with certain information required by the facility for visitors. (ex. 203) The visit to
26 the Center was discussed by the Justices en banc on January 9, 2003. (ex. 204)

27 At the meeting, Justice Mary Fairhurst expressed her concern about the Respondent accepting an
28 invitation from residents of such an institution. After further discussion among the Justices, it was concluded
29

1 that her concerns could be addressed and a number of the Justices, including Justice Fairhurst and Justice
2 Faith Ireland, expressed an interest in attending the tour. (Fairhurst testimony, pp. 66-67)

3 The following day, January 10, 2003, Justice Ireland wrote the superintendent of the Center (copying
4 the Respondent and Andre Brigham Young) noting her interest in touring the Center and visiting with
5 residents. The letter also stated the visit would not be an evaluation, but would be "informational only". (ex.
6 205) On January 13, 2003, Andre Brigham Young again wrote to the Respondent informing him that three
7 members of the African American Collective, including Rickey Calhoun, would be meeting him at the main
8 gate inside the visiting room. At the time of the letter and subsequent tour, Rickey Calhoun had a matter filed
9 in the Washington State Supreme Court. (ex. 155) After identifying specific areas that should be toured, the
10 letter stated as follows:

11 There are areas the SCC Administration would rather you didn't see. That is why we make the
12 request of you to insist that representatives of the African American Collective be there to not only
13 greet you upon your arrival, but also to be part of escorting you to the many different areas listed
14 above. After all, the Collective was responsible for inviting you here, not the SCC Administration.

14 Attached to the letter, was the Third Quarter 2002 Report from the SCC Ombudsman. The first sentence of
15 the report's conclusion states as follows: "SCC is further than ever from creating a constitutionally adequate
16 facility." (ex. 206)

17 The January 13, 2003 letter and attachment generated further interest and concern among the
18 Respondent's colleagues on the Supreme Court. After reviewing the letter, Justice Fairhurst wrote to the
19 Respondent on January 21, 2003 indicating that Andre Brigham Young's letter had caused her to reconsider
20 her decision to tour the facility. She reiterated her issue about responding to the specific request of a resident
21 or group of residents. She also provided the Respondent with a list of published and unpublished cases
22 brought by Andre Brigham Young in both federal and state courts on various issues. (ex. 210)

23 Chief Justice Alexander's testimony also reflects concern:

24 The red flag that went up for me is I thought that he, Andre Brigham Young, was under a
25 misunderstanding that was not consistent with Justice Sanders' memo or Justice Ireland's email, that
26 we were really making an official visit through the auspices of the staff there and not accepting Andre
27 Brigham Young's invitation, and I was concerned that the misunderstanding might lead to difficulties,
28 and so that was the red flag, if you will, that went up for me. (Transcript p. 138)

27 Approximately a week after seeing the January 13, 2003 letter, Justice Ireland determined that she
28 would not participate in the tour. She informed the Respondent and warned him about the differing
29 expectations and her concern that dialogue with the residents about their conditions of confinement would be

1 raised in issues being later presented to the Supreme Court. She testified to a second discussion with the
2 Respondent:

3 We had another conversation later on about the trip and whether the trip should be made and, again,
4 in the same sort of thing across the table from one another where I said, Richard, don't do this, and it
5 was, you know, I was saying, making a warning statement to him, don't do this, and you know, this is a
6 mistake, don't do this, but I think that was probably a week or so after that 13th letter. (Transcript p.
7 242)

8 Shortly thereafter, Justice Ireland bowed out of the tour in a January 22, 2003, letter to the
9 superintendent of the Center. She noted concern about the expectations of the visit as expressed by Andre
10 Brigham Young as well as the high volume of litigation the residents have in the Supreme Court. (ex. 211)

11 On January 23, 2003, the Respondent wrote the superintendent of the Center. The letter stated in
12 part:

13 Please advise the residents that it is not my role to factually investigate particular legal circumstances
14 of any individual and that discussion of same might be grounds to seek my recusal in any pending or
15 future proceeding. That would be my only ground rule and should any discussion lead in that direction
16 I will reiterate what I just said.

17 Further in the letter, the Respondent cautions:

18 Although I have received correspondence from some of the residents regarding the upcoming tour,
19 that correspondence was neither solicited nor responded to, although I agree with its general tenor
20 that the SCC is an important state institution which should be recognized and understood. If there are
21 any particular legal problems, however, they must be dealt with fairly and impartially in the context of
22 appropriate litigation upon which this tour shall and must have no influence whatsoever. (ex. 215)

23 Between the date of the invitation, December 17, 2002, and the date of the tour, January 27, 2003, a
24 case involving sexually violent predators was in the process of being decided by the Washington State
25 Supreme Court, *In re Thorell*. *Thorell* consolidated the appeals of Bernard Thorell, Kenneth R. Gordon, Roger
26 C. Bishop, Gordon Michael Strauss, Charles Lee Johnson and Casper William Ross.

27 At the time of the visit, a dissent authored by the Respondent was being circulated for consideration by
28 the other justices. One of the major issues in *Thorell* was whether a separate jury finding is required on the
29 issue of volitional control in sexually violent predator cases. This is commonly referred to as the "volitional
control" issue.

Andre Brigham Young also had an appeal filed with the Supreme Court. (ex. 180) That appeal also
raised the issue of volitional control. In addition, at the times of the invitation and subsequent tour, there were
several other matters filed in the Washington State Supreme Court by residents of the Center. (ex. 101) The
Respondent read no cases nor made any effort to ascertain if a case was pending in the Supreme Court

1 before he went on the tour. (Sanders' testimony, pp. 1017-1018) Further, the Respondent did not notify
2 counsel of the planned tour, i.e., prosecutors or defense for any of the parties who had cases filed in the
3 Supreme Court at the time of the tour.

4 Sometime before the Respondent visited the facility, lawyers involved in the *Thorell* case and some of
5 the other matters referenced above, (prosecutors in King County and the Attorney General's Office) became
6 aware of the planned visit and communicated among themselves regarding what actions, if any, they should
7 take. (Hackett testimony, p. 823, ex. 607) The visit took place as scheduled on January 27, 2003.

8 Upon his arrival at McNeil Island, the Respondent was met by Center staff. After a short motor-tour
9 conducted by staff, the Respondent visited a recreation center where he had a brief discussion with one
10 resident. He was then taken to a day room where he was introduced to a large group of residents. After that,
11 the Respondent was directed into a small classroom where he initially met with six to seven residents. After
12 he had an opportunity to engage in discourse with the initial group, other residents entered into the classroom
13 one-by-one to replace a corresponding number of residents who exited the room. Upon leaving the
14 classroom, the Respondent was led upstairs by staff to another dayroom where he talked with some other
15 residents. (testimony of McLaughlin, Harris and Sanders). In total, the Respondent had individual
16 communications with approximately 20 residents. (ex. 410; Sanders' testimony, p. 951) Four of the persons
17 with whom the Respondent spoke (Calhoun, Johnson, Peterson, and Young), had pending cases filed in the
18 Washington State Supreme Court at the time of the tour.

19 At the beginning of his discussions with the first group of residents, the Respondent warned them that
20 he could not talk about their personal cases as that might prevent him from hearing matters in the future.
21 (testimony of Farr, Harris, Mahoney and Sanders) Periodically, thereafter, the same caution was mentioned.
22 (testimony of Farr, Harris, Mahoney and Sanders) Addressing the initial group of approximately six residents,
23 the Respondent requested that each of those present tell him about their respective treatment experiences
24 and whether they thought they had lost "*volitional control*" when they committed their crimes. (Sanders'
25 testimony, pp. 948 and 1044; also Farr testimony re "controlling sexual urges" and testimony of Harris,
26 Mahoney and McLaughlin re volitional control.)

27 Sometime during the tour, the Respondent accepted a "butcher paper" document from Ralph Spink, a
28 resident of the Center. (ex. 406A, ex. 410 and McLaughlin testimony) At the time he handed the document to
29 the Respondent, Ralph Spink had a matter filed in the Washington State Supreme Court. The list was a

1 compilation of twenty-nine concerns created by various residents at the Center. There were several
2 references to treatment and statutes. (ex. 406A) The list had no attribution to a specific resident. The
3 Respondent also accepted a manila folder containing an article regarding treatment and recidivism of sex
4 offenders from Keith Rogers, another resident of the Center. (ex. 606; Rogers testimony)

5 The Respondent reviewed the first two to three items listed on the "butcher paper" document after he
6 returned to his office in Olympia. He then placed it in a file cabinet. Without reading it, he also filed away the
7 article contained in the manila envelope he had received from Keith Rogers. (Sanders' testimony, p. 942)

8 The Respondent made no effort to ascertain the names of the residents with whom he met during the
9 tour. Sometime after the visit, the Respondent was provided with a letter from the Attorney General's Office
10 containing a list of the names of the residents who met with him and short summaries of what was said. (ex.
11 402; Sanders' testimony, p. 977) The letter that accompanied the list was also sent to counsel representing
12 the residents on the list. (Sanders' testimony, p. 979) The Respondent made no effort to determine whether
13 the individuals on the list had cases before the Supreme Court. (Sanders' testimony, p. 977)

14 On or about March 18, 2003, a Motion for Recusal was filed in the case of *In re Thorell*. Citing the
15 January visit to the Center, the Motion concluded with the following:

16 In order to preserve public confidence in the judicial system, Justice Sanders should no longer
17 participate in deciding this case. (ex. 400)

18 On April 8, 2003, three Assistant Attorneys General, including the Chief of the Criminal Justice
19 Division, wrote the Clerk of the Supreme Court, C.J. Merritt. The letter requested that the document given to
20 the Respondent by Ralph Spinks and the content of the conversations on the issue of "*volitional control*" be
21 disclosed and filed with the Clerk's office. (ex. 402) The Respondent gave the "butcher paper" document to
22 the Clerk shortly thereafter. The Respondent granted the Motion for Recusal on May 12, 2003, and removed
23 himself from any further proceedings in the case of *In re Thorell*.

24 25 **ALLEGED CANON 3(A)(4) VIOLATION**

26 On April 5, 2004, the Commission determined that probable cause existed to believe that the
27 Respondent violated Canon 3(A) (4) of the Code of Judicial Conduct which reads as follows:

1 **CANON 3**

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

4 **(A) Adjudicative Responsibilities.**

5 ...

- 6 (4) Judges should accord to every person who is legally interested in a proceeding, or that
7 person's lawyer, full right to be heard according to law, and, except as authorized by law,
8 neither initiate nor consider ex parte or other communications concerning a pending or
9 impending 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.

10 The standard of proof required to sustain this violation is clear, cogent and convincing. The record
11 does not meet this high standard. Although there was testimony from witnesses, including the Respondent,
12 that he raised the issue of volitional control during the tour of the Center, the record does not establish that the
13 responses to his general inquiry on the subject were sufficient to sustain a Canon 3(A)(4) violation.

14 **ALLEGED CANON 1 AND CANON 2 VIOLATIONS**

15 On April 5, 2004, the Commission determined that probable cause existed to believe that the
16 Respondent violated Canons 1 and 2 of the Code of Judicial Conduct.

17 These Canons read as follows:

18 **CANON 1**

19 **Judges shall uphold the integrity and independence of the judiciary.**

20 An independent and honorable judiciary is indispensable to justice in our society. Judges
21 should participate in establishing, maintaining and enforcing high standards of judicial
22 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.

23 **CANON 2**

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

- 25 **(A)** Judges should respect and comply with the law and should act at all times in a
26 manner that promotes public confidence in the integrity and impartiality of the
judiciary.
- 27 **(B)** Judges should not allow family, social, or other relationships to influence their judicial
28 conduct or judgment. Judges should not lend the prestige of judicial office to advance
29 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.

1 There is no evidence on the record to support a violation of Canon 2(B).

2 The record establishes by clear, cogent and convincing evidence that before, during and after the visit
3 to the Special Commitment Center the Respondent violated Canons 1 and 2(A). Judges are expected to
4 exercise prudent judgment. In this case, the record is replete with evidence where the Respondent failed to
5 meet that expectation. Those lapses have impaired the integrity and appearance of impartiality of the judiciary
6 and, thus, give rise to the Canon violations.

7 The following examples illustrate this conclusion:

8 The letters of December 17, 2002, and January 13, 2003, put the Respondent on notice that some
9 confusion existed about the purpose of the invitation and the expectations of the visit. It was clear that the
10 authors of the letters wanted something akin to an investigation, rather than an informational tour. Concerns
11 about this issue were raised by some of his colleagues on the Supreme Court. The Respondent dismissed
12 their warnings and placed the burden of notifying the residents about the nature of his visit on the
13 Superintendent of the institution.

14 The Respondent failed to make any inquiries about the people with whom he would be meeting. A
15 cardinal rule in legal ethics is that lawyers do not represent opposing parties or get involved in matters where
16 there is an appearance of a conflict of interest. To avoid such conflicts, lawyers routinely run conflicts checks.
17 The January 13, 2003 letter included the names of four persons who were likely to interact with the
18 Respondent during the visit. A simple computer check of Supreme Court filings would have revealed that
19 Rickey Calhoun and Andre Brigham Young had cases pending before the Supreme Court. By not doing so,
20 Respondent created a situation where it was likely he would interact with these individuals.

21 The Respondent raised the subject of "*volitional control*" with some of the residents during the tour.
22 He introduced the topic at a time when the Justices were circulating draft opinions in *Thorell*, a case dealing
23 with the "*volitional control*" issue. The subtle distinctions offered by the Respondent as a defense to his
24 actions do not cure this lapse of judgment. It is reasonable that lawyers handling appeals that involve
25 "*volitional control*" issues would have concerns about the Respondent's objectivity and impartiality based on
26 this conduct.

27 The Respondent met with Charles Johnson, a litigant in the *Thorell* case. *In re Thorell* had been
28 pending before the Court for several months. This was an appeal involving confinement issues for sexual
29 predators. The Respondent was visiting an institution that confined convicted sexual predators. He should

1 have realized that it was likely that he might interact with a litigant in that case, especially if he was going to
2 inquire about "*volitional control*." At a minimum, the Respondent, upon his arrival at the Center, should have
3 inquired if the Superintendent or anyone on his staff had taken any action regarding his request that the
4 residents be instructed about the limitations of the visit.

5 On two occasions during the visit, the Respondent accepted unknown material from two different
6 residents. While he was testifying, the Respondent made a point of referring to SCC residents as "prisoners"
7 and that he views the SCC as a prison. (Transcript p. 915) It is elementary that a visitor to a correctional
8 facility should not accept packages or other material from an inmate. Even assuming such materials were
9 involuntarily thrust upon him, the Respondent should have immediately turned the documents over to the
10 people responsible for running the institution. Instead, he took them to Olympia and filed them away in his
11 office. Upon returning to Olympia, the Respondent made no initial effort to cure any of his mistakes. He took
12 no further action until he learned that counsel in *Thorell* became aware of his conduct during the visit. On
13 March 18, 2003, a Motion for Recusal was filed. A few days later on April 8, 2003, the Respondent was
14 provided with the names of the residents with whom he interacted. Even with this notification of concern, the
15 Respondent did not run a computer check of the names on the list to ascertain if there might be a problem.

16 The actions of the Respondent that are cited in the examples above violated the Code of Judicial
17 Conduct. Specifically, this conduct violated Canon 1 by failing to enforce high standards of judicial conduct and
18 also violated Canon 2(A) by failing to promote public confidence in the integrity and impartiality of the judiciary.

19 The Respondent takes the position that judges should visit correctional institutions and that he should
20 not be disciplined because he took advantage of the opportunity to have an educational experience. He
21 further offers as a defense the certification from the Mandatory Continuing Judicial Education Committee as
22 proof he did nothing inappropriate.

23 This proceeding is not about whether judges should visit correctional institutions. The Commission
24 strongly encourages judges to visit correctional institutions. Normally such undertakings are tours sponsored
25 by judicial education organizations that make arrangements with the authorities at the institution. If a tour is
26 sponsored or originated by prisoners, prison rights advocates or other non-judicial groups, judges must be
27 cognizant that they have a responsibility to exercise reasonable judgment in such an activity and anticipate
28 potential conflicts and notify counsel when appropriate.

1 On any institutional visit (other than a court inspection pursuant to a specific case over which the judge
2 is presiding), a reasonable judge:

- 3 • considers the likelihood that during such a tour, the judge will come into contact with
4 inmates who presently have or are likely to have a matter pending before the judge. If
5 such a likelihood exists, the judge establishes clear parameters of an institutional visit
6 beforehand and notifies counsel when appropriate;
- 7 • avoids legal discussions with or accepting documents from inmates concerning legal
8 matters while on a tour; and
- 9 • undertakes special efforts to notify the authorities and counsel if inadvertent
10 interaction occurs between the judge and an inmate.

11 The Respondent's failure to exercise good judgment resulted in the ethical violations cited above. By
12 not heeding the warnings of others and by not taking precautionary steps to ascertain if problems existed, the
13 Respondent created legitimate concerns from counsel involved in certain cases before the Court. The
14 Respondent's testimony sums up his state of mind:

15 Well, I believed that the prisoners at this facility would welcome a visit from a state Supreme Court
16 justice to their facility or the Court to their facility. I didn't have any reason to believe that the staff
17 would feel otherwise about it. Beyond that, I didn't—you know, I wasn't thinking about how everybody
else in the world would think about it. (Transcript p.1004).

18 Finally, the Respondent claims that the complaints giving rise to this proceeding were brought by
19 prosecutors who disagree with his judicial philosophy. He contends the complaints are politically motivated
20 and therefore without merit. This argument is unfounded. The Statement of Charges in this proceeding was
21 filed only after a thorough and independent investigation which included consideration of the Respondent's
22 answers to the complaints.

23 FACTORS

24
25 Under both the Rules of the Commission and case law, there are ten non-exclusive factors the
26 Commission must consider in determining the appropriate sanction for a violation of the Code of Judicial
27 Conduct:

28 **1. Whether the conduct was an isolated event or a part of a pattern of conduct.**

29 The violations are all related to one event. The record reveals no pattern of conduct.

1 **2. The nature, extent and frequency of the occurrence of the acts of misconduct.**

2 Although this was an isolated event, as noted above, there were several acts which gave rise to the violations.

3 **3. Whether the misconduct occurred in or out of the courtroom.**

4 The misconduct did not take place in a courtroom; however some of the lapses occurred in the Justice's
5 chambers.

6 **4. Whether the misconduct occurred in the Justice's official capacity or his private life.**

7 All of the misconduct took place in the Justice's official capacity.

8 **5. Whether the Justice has acknowledged or recognized that the acts occurred.**

9 The Justice does not acknowledge or recognize that his actions were inappropriate. Even though he was
10 warned by other Supreme Court justices and has recused himself from a significant Supreme Court case, he
11 remains insensitive to the perceptions of others in the legal community and the general public. His position is
12 that he knows when he is influenced by something and only then does it matter. He also attempts to divert the
13 blame for his conduct by contending that he is a political victim of lawyers who do not share his judicial
14 philosophy. The Respondent's testimony is revealing in that regard. During his testimony, the Respondent
15 was asked if he was concerned with how lawyers perceive his conduct:

16 Q. Are you concerned with how lawyers see your actions as the--

17 A. I am concerned with the activities of certain lawyers. I don't think that lawyers have any
18 misconception about what this tour was about and how the tour was conducted. I don't think
19 that any lawyer, any lawyer, who has testified here or hasn't testified here, ever thought for a
20 second that anything I did on any of these – that anything I did or heard or saw during the
21 course of this tour would ever influence my decision on any case that came before me, not Mr.
22 Hackett, not Mr. Bowers, not Mr. Norm Maleng, not any of them.

20 Q. And that's really the issue for you, isn't it?

21 A. It's the issue for them. (Transcript p. 1052).

22 A follow up question from another Commissioner:

23 Q. Now, I'd like to read a sentence from the preamble to the Code of Judicial Conduct. It says,
24 "Intrinsic to all sections of this code are the precepts that judges, individually and collectively,
25 must respect and honor the judicial office as a public trust and strive to enhance and maintain
26 confidence in our legal system." Now how do you reconcile what you said, that it's not an
27 issue for you on these perceptions, but it's an issue for them, and how do you reconcile that
28 with what's stated in the preamble of the Code of Judicial Conduct?

26 A. Well, this requires a little further explanation. An issue for me would be prejudging a case, an
27 issue for me would be engaging in activity contrary to the code or otherwise which would lead
28 to a legitimate perception that I was less than impartial and that I could not be trusted as a
29 judge to perform my duties impartially. I do not believe that the people that are complaining
about this visit had any effect whatsoever on my views about how to adjudicate these cases. I
think their agenda is a completely different one. (Transcript p. 1080)

1 Other testimony in response to a question from a Commissioner at the end of the proceeding:

2 Q. Thank you. One last question from me. I know that you have read the canons before the
3 proceeding. Do you today believe that you have an affirmative duty to avoid the perception of
impropriety as a Supreme Court justice, sir?

4 A. Yes, but then again, what is the perception of impropriety and what is the basis for that
5 perception? I would hope that the perception would be based upon a full knowledge of the
6 facts and the law, because there's a lot of people out there in society that think things are
improper because they really don't understand what it's all about, and there's different points
of view, so I just try to do the best I can. (Transcript p. 1068)

7 **6. Whether the Justice has evidenced an effort to change or modify his conduct.**

8 As noted in 5 above, the Respondent does not recognize any problems with his conduct, thus it is unknown if
9 the Respondent would repeat similar conduct in the future.

10 **7. The Justice's length of service on the bench.**

11 The Respondent has been a Supreme Court Justice since January 1996.

12 **8. Whether there have been prior complaints against the Justice.**

13 There have been no prior sustained complaints against the Respondent.

14 **9. The effect the misconduct has upon the integrity of and respect for the judiciary.**

15 With the exception of the Respondent's former law clerk, all of the lawyers who testified expressed concern
16 about the Respondent's conduct. It is further evidenced by recusal motions filed against the Respondent by
17 Snohomish County prosecutors. A state Supreme Court Justice is expected to be a model citizen. The
18 expectations of lawyers are similar, especially those who practice before the Court, i.e., justices of the
19 Supreme Court should be model jurists. The actions of the Respondent and his refusal to acknowledge the
20 perceptions of others in the legal community reflect poorly on the Supreme Court and the judiciary in general.

21 **10. The extent to which the Justice exploited his position to satisfy personal desires.**

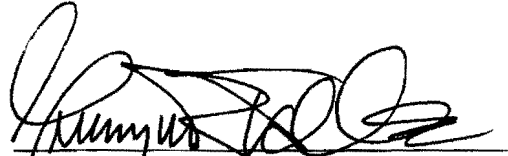
22 There is no evidence in the record to show that the Respondent exploited his position for personal desires.
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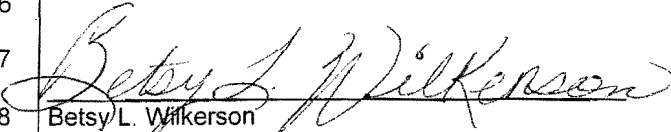
24 **SANCTION**

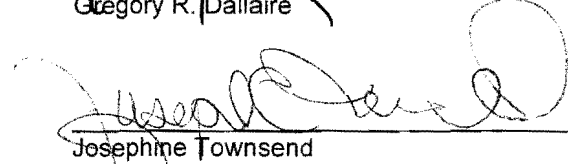
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26 Considering all of the factors above, the Commission must determine an appropriate sanction. The
27 Commission concludes that admonishment is appropriate for this first violation of the Code of Judicial
28 Conduct. Further, consistent with RCW 4.12.040, the Respondent is encouraged to exercise utmost caution in
29


1 considering his involvement in matters concerning the issue of volitional control presented by sexual predators
2 residing at the Special Commitment Center.

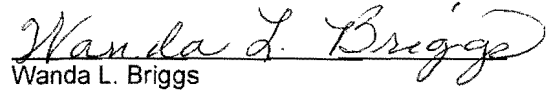
3 Dated as of the 27th day of May, 2005.

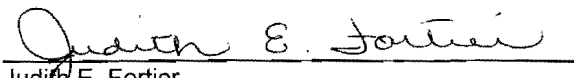
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