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COMMISSION ON JUDICIAL CONDUCT

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

In Re the Matter of

The Honorable Kenneth L. Jorgensen,
Judge of the Grant County Superior Court

No. 4780-F-126

STATEMENT OF CHARGES

I. BACKGROUND

Judge Kenneth L. Jorgensen ("Respondent") is now, and was at all times referred to in this document, a Grant County Superior Court Judge. In December of 1996, the Commission determined that Judge Jorgensen violated Canons 1, 2(A), 2(B), 3(A)(1), 3(A)(4), 3(A)(5) and 3(A)(6) of the Code of Judicial Conduct when he considered ex parte communications and failed to perform the duties of his office impartially, diligently and competently. The judge agreed to complete a program of education and mentoring. The Commission censured the judge. On July 11, 2005, the Commission received a complaint against Respondent. Investigation of the complaint resulted in the present charges.

On September 16, 2005, the Commission informed Respondent by letter that the Commission was commencing initial proceedings against him. A Statement of Allegations was enclosed and a response was invited. Respondent's response to the Statement of Allegations was received on October 3, 2005. Based on the response, the Commission staff engaged in further investigation, and engaged in discussions with Respondent regarding possible resolution of this matter.

At its executive session on the 7th day of April, 2006, the Commission made a finding that probable cause exists to believe that the Respondent violated Canons 1, 2(A), 3(A)(3) and 3(A)(4) of the Code of Judicial Conduct.

II. CONDUCT GIVING RISE TO CHARGES

Respondent is charged with violating Canons 1, 2(A), 3(A)(3) and 3(A)(4) of the Code of Judicial Conduct. It is charged that Respondent conducted a court proceeding during which he questioned a party about matters at issue in the proceeding, in the absence of counsel for that party, although he knew the party to be represented by counsel. By doing so, Respondent interfered with that party's right to counsel and denied her the right to be fully heard according to law. It is further charged that during the hearing Respondent threatened incarceration and engaged in conduct that was overbearing and abusive.

On June 28, 2005, Respondent presided over a hearing on a writ of habeas corpus (Cause Number 03-3-00043-4). The writ directed Ms. W.O. to bring her five year-old niece to court the following morning for a hearing that was scheduled to begin at 9:00 a.m. Prior to the hearing's scheduled start time, Ms. O. was informed by court personnel that Respondent was ready to commence the hearing on the writ of habeas corpus. Ms. O. entered Respondent's courtroom and was directed by Respondent to come forward. As she approached counsel's table, Ms. O. informed the court that she was waiting for her attorney. Despite learning that she was represented by counsel, Respondent proceeded with the hearing in the absence of the attorney and prior to the noted time for the hearing.

Respondent identified the parties, and since the child was not present, Respondent immediately asked Ms. O. the whereabouts of the child. Ms. O. replied that the child was probably at her house in Coulee City with the child's grandmother, where she had been the entire time since the death of her mother. Ms. O. explained that she did not have the child in her care. Respondent questioned Ms. O. as to why she did not have the child with her, whether she was served with the writ, and whether she was deliberately disobeying a court order. Respondent suggested that Ms. O. was concealing the child, and then threatened to incarcerate whoever had the child, even though the writ had been directed to Ms. O., who stated she did not have custody or

1 care of the child. The judge stated that it was obvious to him that Ms. O. was "in
2 cahoots" with the child's grandmother.

3 Ms. O. was frightened and told him she did not want to say anything more until
4 her attorney arrived. The Respondent did not stop the hearing, but instead asked
5 further questions of the habeas corpus Petitioner. Both he and Ms. O. were
6 responding to the judge's questions when Ms. O.'s attorney arrived. Ms. O.'s attorney
7 entered Respondent's courtroom for the 9:00 a.m. scheduled hearing at approximately
8 8:56 a.m. At that time, Respondent was asking the parties about matters relevant to
9 the subject matter of the proceeding.

10 **III. BASIS FOR COMMISSION ACTION**

11 On April 7, 2006, the Commission determined that probable cause exists to
12 believe that Respondent has violated Canons 1, 2(A), 3(A)(3) and 3(A)(4) of the Code
13 of Judicial Conduct (CJC). These sections of the Code state:

14 **CANON 1**

15 **Judges shall uphold the integrity and 16 independence of the judiciary.**

17 An independent and honorable judiciary is indispensable to justice
18 in our society. Judges should participate in establishing, maintaining and
19 enforcing high standards of judicial conduct, and shall personally
20 observe those standards so that the integrity and independence of the
21 judiciary will be preserved. The provisions of this Code are to be
22 construed and applied to further that objective.

23 *Comment*

24 *Deference to the judgments and rulings of courts depends upon public confidence in*
25 *the integrity and independence of judges. The integrity and independence of judges depends*
26 *in turn upon their acting without fear or favor. Although judges should be independent, they*
27 *must comply with the law, including the provisions of this Code. Public confidence in the*
28 *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.

1 **CANON 2**

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

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

7 *Comment*

8 *Maintaining the prestige of judicial office is essential to a system of government in which*
9 *the judiciary functions independently of the executive and legislative branches. Respect for the*
10 *judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should*
11 *distinguish between proper and improper use of the prestige of office in all of their activities.*
12 *The testimony of judges as character witnesses injects the prestige of their office into the*
13 *proceeding in which they testify and may be misunderstood to be an official testimonial. This*
14 *canon however, does not afford judges a privilege against testifying in response to a subpoena.*

15 **CANON 3**

16 **Judges shall perform the duties of their office**
17 **impartially and diligently.**

18 (A) Adjudicative Responsibilities.

19 (3) Judges should be patient, dignified and courteous to litigants,
20 jurors, witnesses, lawyers and others with whom judges deal in their
21 official capacity, and should require similar conduct of lawyers, and of the
22 staff, court officials and others subject to their direction and control.

23 *Comment*

24 *The duty to hear all proceedings fairly and with patience is not inconsistent with the duty*
25 *to dispose promptly of the business of the court. Courts can be efficient and businesslike while*
26 *being patient and deliberate.*

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

29 *Comment*

30 *The proscription against communications concerning a proceeding includes*
31 *communications from lawyers, law teachers, and other persons who are not participants in the*
32 *proceeding, except to the limited extent permitted. It does not preclude judges from consulting*

1 with other judges, or with court personnel whose function is to aid judges in carrying out their
2 adjudicative responsibilities.

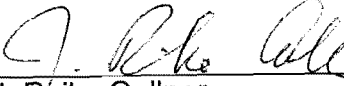
3 An appropriate and often desirable procedure for a court to obtain the advice of a
4 disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

5 **IV. RIGHT TO FILE A WRITTEN ANSWER**

6 In accordance with CJCRP 20, Respondent may file a written answer to this
7 Statement of Charges with the Commission and serve a copy on disciplinary counsel
8 within twenty-one (21) days after the date of service of the Statement of Charges.
9 Failure to timely answer shall constitute an admission of the factual allegations. In the
10 event Respondent fails to answer within the prescribed time, the Statement of Charges
11 shall be deemed admitted, and the Commission shall proceed to determine the
12 appropriate discipline.

13
14 DATED this 3rd day of May 2006.

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16 COMMISSION ON JUDICIAL CONDUCT
17 OF THE STATE OF WASHINGTON

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