BEFORE THE COMMISSION ON JUDICIAL CONDUCT

OF THE STATE OF WASHINGTON

In Re the Matter of: The Honorable Bruce A. Spanner, Superior Court Judge for Benton and Franklin Counties	No. 8899-F-186 **ANSWER TO STATEMENT OF CHARGES**

COMES NOW, the Honorable Judge Bruce A. Spanner, Superior Court Judge for Benton and Franklin Counties, and hereby answers the Statement of Charges filed herein:

1. BACKGROUND

At all relevant times, Judge Spanner was motivated solely by his desire to maintain dignity and respect for the court, to protect its reputation and to control its processes. Accordingly, when he unwittingly discovered egregious misconduct on the part of attorneys, Andrea Clare and George Telquist, Judge Spanner in good faith and consistent with his statutory and inherent authority, took appropriate and measured action to address the misconduct. Specifically, attorneys Andrea Clare and George Telquist, misused GR 22 to inappropriately cause documents relating to a settlement where they earned an enormous fee to be inappropriately sealed. Judge Spanner believed that they were good attorneys, and therefore aware that documents can only be sealed after a public hearing conducted pursuant to the *Ishikawa*[1] case. They misused their positions as attorneys by avoiding a public *Ishikawa* hearing. Ms. Clare admitted that the documents were improperly sealed under GR 22 in a sworn statement subsequently filed in the subject case. Ms. Clare and Mr. Telquist were motivated at

[1] *Seattle Times v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982).

least in part to hide the enormous fee from Ms. Clare's husband, and in order to gain advantage in the divorce. The Clares were involved in a very contentious divorce. Ms. Clare admitted in a sworn statement subsequently filed in the subject case that she was motivated in part to delay the disclosure of the settlement to Mr. Clare.

With that in mind, the specific allegations of the "Background" section are hereby addressed.

1. Admit.

2. Admit that the Commission received a complaint. But, inasmuch as the Commission has declined Judge Spanner's request to see the complaint, it is impossible to fully address the content of the same. The undersigned does state, however, that the attorneys identified above abused their positions as attorneys. Judge Spanner did not abuse his position as a judge. He acted at all times to further dignity and respect for the court and to control its processes. Judge Spanner made tentative findings of fact based upon reliable information. He issued his order sua sponte, consistent with his inherent and statutory authority. Further, and consistent with principles of due process, Judge Spanner gave Ms. Clare and Mr. Telquist an adequate opportunity to present evidence demonstrating that he was not correct.

3. Without admitting the correctness of the Commission's conclusions, as set for in the Statement of Allegations, Judge Spanner admits that the Commission acted as described. Judge Spanner specifically denies that his actions were motivated by bias, prejudice or retaliation against the attorneys, and further denies that a reasonable person who is fully informed regarding the matter, Judge Spanner's historical relationship with the attorneys and Judge Spanner's penchant for protecting the dignity and respect of the court and its processes, would believe that Judge Spanner was motivated by bias, prejudice or retaliation against the attorneys.

4. Admit. The Commission has not asserted that Judge Spanner's conclusion that the attorneys committed intentional misconduct was factually or legally incorrect.

5. Judge Spanner was not at the meeting of the Commission on April 26, 2019, and therefore lacks information upon which to address the actions of the Commission on that date. But, it is manifest that the Commission has issued a Statement of Charges.

II. Conduct Giving Rise To Charges

Answering the unnumbered paragraphs in Section II of the Statement of Charges, Judge Spanner was assigned to the Guardianship/Probate Docket on March 14, 2018. There were four matters set to be heard. After reviewing the other files, he came to the matter involving Mr. Telquist and Ms. Clare. The matter that was noted on the docket was a motion in a guardianship for a young woman who had suffered a devastating brain injury arising from medical malpractice. The file indicated that a lawsuit against Deaconess Hospital in Spokane had been recently settled (with no details provided), and Mr. Telquist was asking the court to set a schedule for the filing of a proposed personal care plan and budget. He also asked for approval of his attorney fees. Judge Spanner noted first that Mr. Telquist was not an attorney of record. He also saw that the budget, once proposed, would be based on work performed by experts Tony Choppa and Maui Garza. He made himself a note to disclose on the record that his former law firm had a long relationship with Mr. Choppa. Judge Spanner did not think he ever used him as an expert, but was aware that his former partner, Ken Miller, had hired him with some regularity. Judge Spanner was going to also disclose that Mr. Garza was a former client of his. He believes he formed Mr. Garza's corporation and knows that he provided general legal services over many years. The work of those experts would have a bearing on the approval of the budget and

personal care plan, but it had no bearing on the motion to schedule the deadlines for the budget and personal care plan.

The last file in the rack was not scheduled for a hearing. It took Judge Spanner some time to figure out the connection between the guardianship matter and the last file. Eventually, it became apparent that the file was the companion to Mr. Telquist's guardianship file. It is quite common, at least in Benton County, for the clerks to provide companion files to assist judicial officers in preparing for hearings. Thus, Judge Spanner reviewed it in the ordinary course. He found in that file a very large settlement with Deaconess Hospital had been approved. He thought it odd that the petition for approval of the settlement was in the public portion of the file but that every supporting document, including the report of the settlement guardian ad litem, affidavits supporting the contingent fee and the order approving the settlement were in a confidential file. Every document inappropriately had a "Sealed Source Document" cover sheet. Judge Spanner looked but could not find an order sealing the file or any documents therein. Judge Spanner looked for an order sealing the file because, except as authorized under GR 22, files and documents in a non-juvenile proceeding cannot be sealed without a court order. As a judicial officer, he was entitled to review sealed and confidential information in the performance of his duties, particularly those documents that purported to be sealed by the misapplication of GR 22.

GR 22 states that the general rule is open access to court records. It allows restricted access to "[t]he Confidential Information Form, Sealed Financial Source Documents, Domestic Violence Information Form, Notice of Intent to Relocate required by RCW 26.09.440, Sealed Personal Health Care Record, Retirement Plan Order, Confidential Reports as defined in GR 22 (e)(2)(B), copies of any unredacted Judicial Information System (JIS) database information

considered by the court for parenting plan approval as set forth in (f) of [said] rule, and any Personal Information Sheet necessary for JIS purposes." GR 22 (b)(2). None of the documents filed in the subject case were those types of documents.

GR 22 authorizes the filing of "financial source documents, personal health care records, confidential reports as defined in GR 22 (e)(2)(B) of [said] rule, and copies of unredacted JIS database records considered by the court for parenting plan approval as set forth in (f) of [said] rule, [and] shall be submitted to the clerk under a cover sheet designated 'SEALED FINANCIAL SOURCE DOCUMENTS,' 'SEALED PERSONAL HEALTH CARE RECORDS,' 'SEALED CONFIDENTIAL REPORT' or 'JUDICIAL INFORMATION SYSTEM DATABASE RECORDS'". GR 22(g)(1). The rule goes on to state explicitly that "[t]hese cover sheets may not be used for any documents except as provided in this rule. Sanctions may be imposed upon any party or attorney who violates this rule." GR 22(g)(4). The misuse of GR 22 was manifest. No attorney could fail to realize that he/she was purporting to create sealed records in direct contravention of GR 22, the very rule relied upon.

Judge Spanner studied the petition to approve the minor settlement. It was in the public portion of the file. Unlike every other such petition he has reviewed, there were absolutely no details regarding the settlement, the proposed fees and proposed distribution in the petition. He looked through the public file for any document that revealed any detail regarding the settlement or the attorney fees. The public file was completely devoid of those details. It was obvious that Attorneys Clare and Telquist were intentionally attempting to keep the details of the settlement secret. They had secretly sought and obtained approval of an enormous fee.

Mr. Telquist and Ms. Clare undoubtedly were aware that the clerk was obligated to treat documents filed under "Sealed Source Cover Sheets" as confidential regardless of the

propriety of the use of the cover sheets. GR 22(g)(2): "All financial source documents, personal health care records, confidential reports, or JIS database records so submitted shall be automatically sealed by the clerk." (Emphasis added). It appears that they have so advised the Commission.

Judge Spanner concluded that Mr. Telquist and Ms. Clare had made the court an unwitting participant in their scheme, by submitting the order approving the settlement by Judge Swanberg accompanied by or under a Sealed Source Cover Sheet. Judge Spanner was reluctant to allow the court to be used that way, as one of his responsibilities is to maintain respect for the court. After thinking about the matter for most of the morning he decided at about 11:00 a.m. to prepare an order unsealing the above-referenced documents. Before he could begin drafting the order, he was advised that Mr. Telquist had filed an affidavit of prejudice. But, Judge Spanner did not know immediately which case the affidavit was filed, the guardianship or the minor settlement. Taking the conservative approach, Judge Spanner proceeded as if an affidavit had been filed in both cases. Judge Spanner wondered why Mr. Telquist would file the affidavit of prejudice in the guardianship case. The motions in the guardianship matter were simple. It appeared to be part of the pattern to keep the settlement and the attorney fees secret.

Because of the affidavit, Judge Spanner knew that he could not discuss the cases with any of his colleagues, and especially Commissioner Stam, as she was supposed to take over the Guardianship/Probate docket that afternoon because of the affidavit of prejudice. He does not know whether she did or not. He knew that, once a judge is disqualified to hear a matter, the judge must refrain from saying or doing anything that might influence the successor judicial officer. Accordingly, he did nothing further on either the guardianship or minor settlement matters other than return the files to the clerk. Then, around noon, he saw the affidavit of

prejudice. It was filed in the guardianship case, not the minor settlement case. With that, he retrieved the minor settlement case files and set about preparing the subject order in the minor settlement case. In its Statement of Charges, the Commission obfuscates the facts concerning the affidavit of prejudice. The affidavit of prejudice was filed only in the guardianship file, not the minor settlement file. As such, Judge Spanner was not disqualified from responding to the attorney misconduct in the minor settlement file. He was only disqualified from acting in the guardianship case.

Judge Spanner knew that both GR 15 and *Ishikawa* require a hearing in open court for a court document to be sealed. Every hearing is posted on the applicable daily schedule. Every hearing is open to the public. The *Ishikawa* factors are such that every attorney who is court would understand and appreciate the intended purpose of the sealing of the documents. Attorneys watch the daily schedule Attorneys talk with each other. The Clare divorce was contentious enough that other attorneys must have been aware of it. Had Mr. Telquist and Ms. Clare followed the law and scheduled a public hearing, the matter would have gotten back to Mr. Clare's attorney. Judge Spanner concluded that they had deliberately declined to follow *Ishikawa*, and instead misused GR 22, as part of the pattern of inappropriately keeping the details of the settlement secret.

Judge Spanner spoke with Tiffany Deaton, Assistant Administrator, on the morning of March 15, 2018. He gave her a brief description of the events of March 14, 2018 and told her to expect affidavits of prejudice on all files involving Mr. Telquist and Ms. Clare in the future. Her response was to say words to the effect of, "That's why George came in to Court Administration on those two cases, all animated! I've never seen him like that. He insisted that those two cases be put to the foot of the docket, so that the courtroom would be empty. He said it had something

to do with a settlement for a young girl." This certainly validates Judge Spanner's impression and conclusion regarding Mr. Telquist's and Ms. Clare's motivations. It is also consistent with the pattern of inappropriately keeping the settlement secret.

On March 14, 2108, Judge Spanner understood from reliable sources within Court Administration that a recent proceeding was held where one of the issues was the sale or possession of the Clare's family home. Judge Spanner understood that Mr. Clare was a stay-at-home dad, and the Ms. Clare was the breadwinner. About a year earlier, Judge Spanner heard that Ms. Clare and Mr. Telquist had become intimate. Divorce proceedings were initiated to dissolve both marriages. Ms. Clare's divorce is pending in Franklin County. It was assigned to Walla Walla County Superior Court Judge John Lohmann because the entire bench in Benton Franklin Superior Court has recused. Judge Spanner overheard conversations between court staff that the divorce was very contentious. The Commission characterizes these discussions as being "unreliable". They were quite reliable, contemporaneous reports by trusted court staff of proceedings in a public courtroom.

Judge Spanner overheard conversations from which he gleaned that Mr. Clare remained in in the home around February or March 2018, and Ms. Clare was dissatisfied with that. A hearing was held in Courtroom #2 in Franklin County. The hearing was in either late February or early March. It is a virtual certainty that the settlement agreement had been reached before that hearing. Judge Spanner does not know the outcome of the hearing.

Ms. Clare indicated in an affidavit that she began work on the big case while she was with the Levy Shultz firm. He was also aware that the Leavy Schultz firm had sued Ms. Clare for a portion of the fee from the big case. Judge Spanner was aware of that, as he denied an ex parte motion for default in the case. Judge Spanner understood that Ms. Clare left the Leavy

Schultz firm before she separated from her husband. Ms. Clare's share of the fee was a potential game changer in her divorce. It was a lot of money. Judge Spanner reasonably concluded that the large fee was kept secret in order to gain advantage in the divorce.

Judge Spanner also understood on March 14, 2018 that Mr. Telquist represented Ms. Clare in the divorce. He was told that when it became apparent that Mr. Telquist intended to depose Mr. Clare, a motion was brought to prevent that. Ms. Clare and Mr. Telquist were in an intimate relationship. At the same time, Mr. Telquist attempted to take the deposition of Mr. Clare in an apparent attempt to humiliate him or otherwise gain tactical advantage. It follows that an attorney who would engage in that kind of mean-spirited behavior would also intentionally misuse GR 22 to gain advantage in litigation. Judge Lohmann granted Mr. Clare's motion for a protective order, thereby preventing Mr. Telquist from taking the deposition. Judge Spanner only brings this up because he was aware of it on March 14, 2018, and, therefore, understood the lengths to which Mr. Telquist and Ms. Clare would go to achieve an advantage in the divorce. It was part of the pattern.

The Statement of Charges does not suggest that Judge Spanner harbored any ill will toward Ms. Clare of Mr. Telquist in March 2018. Indeed, Judge Spanner did not. There also seems to be a suggestion that Judge Spanner took Mr. Clare's side in the divorce. He did not. He acted appropriately to reduce the possibility that Ms. Clare gained an unfair advantage through her misconduct. That is consistent with his obligations under the Code of Judicial Conduct. It should be noted that in March 2018, Judge Spanner could not even remember Mr. Clare's first name. Judge Spanner had not spoken to Mr. Clare in years. He did not know whether either of the Clares still attend Bethel Church. He never talked to either Clare regarding the divorce. He had not talked to Mr. Clare's attorney, Ben Dow, about the divorce. In fact, he

intentionally refrained from alerting Mr. Dow about the subject order. He did not bring it to the attention of Judge Lohmann or any other person associated with their divorce. He did not act with the intention of influencing Judge Lohmann. He did not speak to him about the matter. He did not send him a copy of the order. Judge Spanner did not ask anyone else to do those things.

Judge Spanner did not unseal the subject file without giving Mr. Telquist and Ms. Clare the opportunity to prove him wrong. He gave them 14 days to file a motion to seal under GR 15 and *Ishikawa*. They did, and Judge Spanner recused himself. The motion was assigned to Judge Mitchell. Judge Spanner was careful not to speak to him prior to the hearing. Judge Mitchell denied the motion, finding that the moving parties had not established the first element, namely the showing that there was a compelling interest that required protection by sealing. Ben Dow attended the hearing. Judge Spanner has no idea how he found out about it. He certainly did not hear it from Judge Spanner. But, it is clear that Judge Spanner was correct in that Mr. Dow did hear about it, and would have heard about a similar effort to seal the minor settlement file had Ms. Clare and Mr. Telquist properly file an *Ishikawa* motion prior to March 14, 2018.

Distilled to its essence, on March 14, 2018 Judge Spanner stumbled upon gross and willful misconduct by attorneys, George Telquist and Andrea Clare. Consistent with his obligations to promote confidence in the independence, integrity and impartiality of the judiciary (CJC Rule 1.2), to uphold and apply the law fairly and impartially (CJC Rule 2.2), to ensure that all parties have a right to be heard (CJC Rule 2.6), and his responsibility to take appropriate action when he has credible evidence of lawyer misconduct (CJC Rule 2.15(D), he took appropriate and measured remedial action. The misconduct was so well planned and executed by Mr. Telquist and Ms. Clare that he felt that he had to act decisively and emphatically as a deterrent against such misconduct in the future. In other words, the tentative finding that the

attorneys' motivation was "perhaps nefarious" was factually and legally correct and it was not "gratuitous". It was not "surmised" nor speculation. Judge Spanner practiced as a litigation attorney for almost 25 years. Based upon the information available to him and his experience, he reached reasonable conclusions regarding the misconduct and the motivations therefor. Judge Spanner had a duty to act. His response depended upon the level of culpability of the attorneys. He found their misconduct to be willful. He found it to be calculated. He found it to be consistent with other sharp practices employed in a contentious divorce. He found it to be motivated by a desire to gain advantage in other litigation by improper means. Hence, the correct course of action was to unseal the file, giving the attorneys an opportunity to file a proper and public motion to seal. Had the misuse of GR 22 appeared to be inadvertent, a less remedy would have been appropriate.

The Commission seems to imply that Judge Spanner lacked authority to act on the minor settlement case on March 14, 2018 because it was not docketed for a hearing. The Commission goes on to suggest that the proper course of action was to either engage in ex parte communications with Judge Swanberg or to issue an order to show cause. Those positions are inconsistent. Either Judge Spanner had authority to act in response to gross misconduct or he didn't. He, of course, maintains that he did. The commission is critical of the order entered, as it included findings of fact and conclusions of law, rather than a vanilla order to show cause. If Judge Spanner employed an inappropriate procedure, that would fall into the category of legal error, not judicial misconduct.

III. BASIS FOR COMMISSION ACTION.

The Statement of Charges indicates that Judge Spanner may have violated CJC Rule 1.1, which states: **"A judge shall comply with the law, including the Code of Judicial Conduct."** He believes he most certainly did. He discovered blatant attorney misconduct and took appropriate action, consistent with his inherent and statutory authority.

The Statement of Charges indicates that Judge Spanner may have violated CJC Rule 1.2, which states: **"A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."** He was motivated solely by his desire to act in a manner that "promotes public confidence in the independence, integrity, and impartiality of the judiciary". Had he not acted decisively, he would have undermined "public confidence in the independence, integrity, and impartiality of the judiciary". Further, he sees no basis for suggestion that he engaged in conduct manifesting "impropriety and the appearance of impropriety."

The Statement of Charges indicates that Judge Spanner may have violated CJC Rule 1.4, which states: **"A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so."** The Statement of Charges does not include any factual allegations supporting this charge. Judge Spanner had nothing to gain. He did not advance the interests of himself or Mr. Clare. He acted only to preserve dignity and respect for the court and its reputation and to protect its processes.

The Statement of Charges indicates that Judge Spanner may have violated CJC Rule 2.2, which states: **"A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially."** As indicated earlier, he upheld the law. Mr. Telquist

and Ms. Clare clearly violated GR 22 and ignored GR 15 and *Ishikawa.* They did so to gain an unfair advantage in the Clare divorce. Judge Spanner acted fairly and impartially. He gave them an opportunity to persuade another judge that he was mistaken. They were unable to do so, without any input from Judge Spanner.

The Statement of Charges indicates that Judge Spanner may have violated CJC Rule 2.3A, which states: **"A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice."** There was no bias. There was no prejudice. He had good relationships with Mr. Telquist and Ms. Clare. He was motivated only by his desire to address the wrong they perpetrated.

The Statement of Charges indicates that he may have violated CJC Rule 2.6A, which states: **"A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law."** By staying my order until a proper motion to seal could be made, Judge Spanner made sure that the complainant(s) were given an opportunity to be heard.

The Statement of Charges indicates that he may have violated CJC Rule 2.9A, which states: **"A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, before that judge's court except as follows:**

> **1. When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, or ex parte communication pursuant to a written policy or rule for a mental health court, drug court, or other therapeutic court, is permitted, provided:**

a) **the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and**

b) **the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond."**

Judge Spanner disagrees with the Commission's interpretation of this rule. He was not assigned to the Clare divorce. Thus, the case was not "before" his court. Judge Spanner could not reasonably believe that case could ever be "before" him. Therefore, the conversations he overheard could not be ex parte communications. To adopt a contrary position would require judges to cloister themselves in their chambers in order to avoid hearing anything about any case, party, or attorney. From the above, it is clear that he actively avoided ex parte communications, particularly with Judge Lohmann, his bench mates, Mr. Clare and his attorney.

The Statement of Charges indicates that Judge Spanner may have violated CJC Rule 2.9B, which states: **"If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond."** Judge Spanner disagrees with the Commission's interpretation of this rule. He was not assigned to the Clare divorce. The case was not "before" his court. Judge Spanner could not reasonably believe that case could ever be "before" him. The conversations he overheard could not be ex parte communications. Therefore, this rule does not apply.

The Statement of Charges indicates that Judge Spanner may have violated CJC Rule 2.9C, which states: **"A judge shall not investigate facts in a matter pending or impending before that judge, and shall consider only the evidence presented and any facts that may properly be judicially noticed, unless expressly authorized by law."** Judge Spanner did not conduct an investigation. He relied upon knowledge he had reliably gained. The Statement of Charges does not include any factual allegations supporting this claim. Considering the nature of the attorney misconduct, and Judge Spanner's inherent authority, the facts of which he was aware could be judicially noticed.

Judge Spanner had broad inherent authority to act to preserve dignity and respect of the court and to preserve its processes. *Randy Reynolds & Associates v. Harmon*, 437 P. 3d 677 (2019); *Riddle v. Elofson, 439 P.3d 647 (2019); State v. Loomer*, No. 77360-7-I, 2018 WL 3120844, at 6 (Wash. Ct. App. June 25, 2018; Unpublished Opinion); *Stevenson v. Canning*, 166 Wash. App. 1027 (2012). That includes the authority to act *sua sponte*. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962); *McRae v. Tahitian, LLC*, 181 Wash. App. 638, 645, 326 P.3d 821, 824 (2014). He had authority to act without a hearing. *Ledcor Indus. (USA), Inc. v. Mut. of Enumclaw Ins. Co.*, 150 Wash. App. 1, 206 P.3d 1255 (2009). *Rickey v. Munce*, 174 Wash. App. 1019 (2013 Unpublished Opinion); *First-Citizens Bank & Tr. Co. v. Reikow*, 177 Wash. App. 787, 795–96, 313 P.3d 1208, 1213 (2013); *State v. Martinez*, 76 Wash. App. 1, 6-8, 884 P.2d 3 (1994), *review denied*, 126 Wash.2d 1011, 892 P.2d 1089 (1995); *State v. Falco*, 59 Wash. App. 354, 356, 796 P.2d 796 (1990); *State v. Herrera*, 95 Wash. App. 328, 330, 977 P.2d 12, 13 (1999); *State v. Hoffman*, 116 Wash.2d 51, 111, 804 P.2d 577 (1991). *State v. Lawrence*, 166 Wash. App. 378, 396, 271 P.3d 280, 289 (2012); *Hough v. Stockbridge*, 150 Wn.2d 234, 235, 76 P.2d 216 (2003). The contention that a litigant was denied

procedural due process when the trial court issued restraining orders sua sponte was rejected. *Milutinovic v. Moritz*, 196 Wash. App. 1065 (2016); *Matter of Dependency of Z.F.S. v. Smith*, 199 Wash. App. 1034 (2017). *In re Estate of Hayes*, 185 Wash. App. 567, 592, 342 P.3d 1161, 1175 (2015). A juvenile's claim that the court's sua sponte imposition of the manifest injustice violated his due process rights has been rejected. *State v. Moro*, 117 Wash. App. 913, 916, 73 P.3d 1029, 1030 (2003).

Judge Spanner's inherent authority is also derived from statute and is particularly relevant here.

> Every court of justice has power (1) To preserve and enforce order in its immediate presence. (2) To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority. (3) To provide for the orderly conduct of proceedings before it or its officers. (4) To compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein. (5) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto. (6) To compel the attendance of persons to testify in an action, suit or proceeding therein, in the cases and manner provided by law. (7) To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

RCW 2.28.010 (emphasis added). This statute grants trial judges broad discretionary authority. *State v. Loomer*, No. 77360-7-I, 2018 WL 3120844, at 6 (Wash. Ct. App. June 25, 2018; Unpublished Opinion).

Judges also have inherent authority to protect the integrity of court processes. Thus, for example, a trial court can raise Batson sua sponte based upon the trial court's role in protecting the integrity of the jury selection process. State v. Brumble, 90 Wash. App. 1015 (1998); *State v. Noltie,* 116 Wash.2d 831, 839, 809 P.2d 190 (1991). State v. Boiko, 138 Wash. App. 256, 263, 156 P.3d 934, 938 (2007).

This interpretation is consistent with the interpretation of appellate rules and their enabling statutes. Under RCW 2.04.180 and .190, the Supreme Court may promulgate rules as it deems necessary to promote, among other thing, the efficient operation of the court. While ordinarily the Supreme Court will decide a case only on the basis of issues raised in the petition for review and the answer, RAP 13.7(b) provides the court authority "to.determine whether a matter is properly before the court, to perform those acts which are proper to secure fair and orderly review, and to waive the rules of appellate procedure when necessary to 'serve the ends of justice.'" *State v. Aho*, 137 Wash. 2d 736, 740–41, 975 P.2d 512, 514 (1999). Such a decision is made sua sponte.

Based upon the foregoing, Judge Spanner respectfully asks that the Commission dismiss the Statement of Charges.

Dated this 21st day of May, 2019.

/s/ Brandon L. Johnson
Brandon L. Johnson, WSBA # 30837
Attorney for Respondent