

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED
MAY - 2 2019
COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of:)

The Honorable Bruce A. Spanner,)
Superior Court Judge for Benton and)
Franklin Counties)
_____)

No. 8899-F-186

STATEMENT OF CHARGES

Pursuant to authority granted in Article IV, Section 31 of the Washington State Constitution, the Revised Code of Washington, Chapter 2.64, and the Commission on Judicial Conduct Rules of Procedure ("CJCRP"), 17(d)(4)(C), the Commission on Judicial Conduct orders this Statement of Charges filed alleging violations of the Code of Judicial Conduct by Judge Bruce A. Spanner.

I. BACKGROUND

1. Judge Bruce A. Spanner ("Respondent") is now, and was at all times referred to in this document, a superior court judge for Benton and Franklin Counties.
2. On March 15, 2018, the Commission received a complaint against Respondent, alleging he abused his judicial position by entering an order without notice or an opportunity to be heard, and by making findings and conclusions therein based upon off-record, unreliable ex parte information.
3. Pursuant to CJCRP 17(c)(3), following a confidential independent preliminary investigation, the Commission initiated disciplinary proceedings against Respondent by serving him with a Statement of Allegations on August 10, 2018. The Statement of Allegations alleged that Respondent may have violated the Code of Judicial Conduct on March 14, 2018, by issuing an Order Unsealing Documents ex parte and without giving the parties notice or an opportunity to be heard prior to its issuance, and that his actions could reasonably be perceived to indicate bias, prejudice or retaliation against the attorneys identified in the order.
4. Respondent timely answered the Statement of Allegations on August 29, 2018. In his

answer, Respondent denied violating the Code as alleged. He explained that on the date in question, he believed he discovered attorney misconduct and that his actions were motivated solely by his desire to protect the integrity of the court, not out of any hostility or animus towards the attorneys. He also wrote that by staying his order for 14 days, he gave the parties an opportunity to be heard on the underlying issue. Respondent provided a supplemental response, dated February 11, 2019, further arguing that his actions were justified and did not indicate bias or prejudice.

5. At its regularly scheduled meeting on April 26, 2019, in executive session, the Commission made a finding that probable cause exists to believe that the Respondent violated Canon 1 (Rules 1.1, 1.2 and 1.3) and Canon 2 (Rules 2.2, 2.3(A), 2.6(A) and 2.9) of the Code of Judicial Conduct.

II. CONDUCT GIVING RISE TO CHARGES

On March 14, 2018, Respondent was assigned to hear the Benton County Superior Court guardianship/probate docket. One of the four cases on that afternoon docket, Cause No. 17-4-00423-0, was a guardianship of a young woman who had suffered a devastating brain injury arising from medical malpractice. Prior to the hearing, the young woman's attorneys filed a motion disqualifying Respondent from hearing her case, resulting in the hearing being stricken from the calendar and rescheduled to be heard by a different judicial officer.¹

Before Respondent was informed of his disqualification, in the ordinary course of preparing for the afternoon docket, he had reviewed the guardianship case file as well as a separate, related case file involving the young woman.² That case was a minor settlement action, wherein a confidential settlement of the young woman's medical malpractice case was reviewed and approved by one of

¹ An affidavit of prejudice, now referred to as a notice of disqualification, permits a party to remove one judge per case without stating a reason, provided the judge has not yet made discretionary decisions in the case. RCW 4.12.040.

² It is the practice for court staff in that county to supply judges with case files that are related to currently docketed cases, for the judges' preparation.

Respondent's benchmates on March 2, 2018.³ Since the settlement had already been approved, there was no further activity anticipated in it. In reviewing the minor settlement file, Respondent observed that the settlement and supporting documentation were filed under seal and kept confidential through a procedure that did not apply to minor settlement actions. Respondent surmised, based on general talk he had heard at the courthouse and in the community, that the attorneys in the minor settlement case improperly sought to keep the settlement confidential to avoid disclosing the settlement amount in one of the attorney's pending dissolution case. Respondent suspected that attorney was motivated by a desire to keep her earnings from the settlement secret from her estranged husband. Respondent concluded the attorney intentionally had the case sealed improperly, in order to defraud her estranged husband and also thereby committed a fraud on the court.

Although the minor settlement case was not before Respondent or docketed for any action on March 14, 2018, on his own initiative and without notice to any party, Respondent issued an Order Unsealing Documents in that case. In his Order, Respondent made a "finding of fact" that the documents were filed under seal in order to prevent the young woman's attorney's husband "from learning the details of the settlement in this matter, and the extremely large fee granted to plaintiff's attorneys." Respondent further made a "legal conclusion" that filing the documents under seal "was done without lawful authority, done with perhaps nefarious motivations, and therefore, improper." Respondent stayed the order unsealing the case for 14 days to allow the parties an opportunity to address his decision.

³ The young woman was a plaintiff in a medical malpractice case filed in Spokane Superior Court in 2016. After nearly two years of extensive discovery and pretrial litigation that matter was resolved by agreement of the parties. The settlement agreement was conditioned, in part, on it remaining confidential. Because the young woman was disabled or incapacitated due to her injuries, by law her settlement had to be approved by a judge in a separate action. (See Special Proceedings Rule 98.16W.)

III. BASIS FOR COMMISSION ACTION

Probable cause exists to believe that Respondent has violated Canon 1 (Rules 1.1, 1.2 and 1.3) and Canon 2 (Rules 2.2, 2.3(A), 2.6(A) and 2.9) of the Code of Judicial Conduct. These sections of the Code provide:

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

RULE 1.2 Promoting Confidence in the Judiciary

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.

RULE 1.3 Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow other to do so.

CANON 2

A JUDGE SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2.2 Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially

RULE 2.3 Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

RULE 2.6 Ensuring the Right to be Heard

(A) 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.

RULE 2.9 Ex Parte Communications

(A) 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

...

(B) 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.

(C) 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.

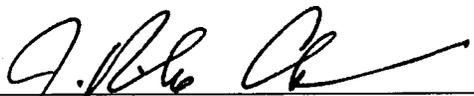
Respondent entered an order and made findings of fact and conclusions of law in a case that was not before him for a decision, and did so on his own initiative and without giving notice or the opportunity to be heard prior to entering that order, in violation of Rule 2.6. His conclusion that the attorneys acted "with perhaps nefarious motivations" and his finding that the documents were sealed to prevent the attorney's husband from learning the details of the settlement were not based on a motion, evidence or argument presented to the bench, but on mere speculation and conjecture from information Respondent gained from extrajudicial sources, in violation of Rules 1.3 and 2.9. Rather than bringing his suspicions to the judge who had earlier ruled on the case, or scheduling a show cause hearing so that the lawyers and parties could explain what had happened, he made findings and conclusions and entered an order based on conjecture, rather than on evidence, depriving all parties of basic notice and the opportunity to be heard. His finding and conclusion of a suspected nefarious motive was not only unsupported by competent evidence, but was unnecessary to the substantive question of whether the documents were properly sealed, and thus seems to gratuitously impugn the attorney's integrity, which in turn creates a perception of partiality and unfairness, in contravention of Rules 2.2 and 2.3. This conduct, in its totality, undermines the basic principles of the Code found in Rules 1.1 and 1.2.

IV. RIGHT TO FILE A WRITTEN ANSWER

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

DATED this 2nd day of May 2019.

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON



J. Reiko Callner
Executive Director
P.O. Box 1817
Olympia, WA 98507