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**FILED**

JUL 20 2020

**COMMISSION ON JUDICIAL CONDUCT**

BEFORE THE COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON

In Re the Matter of

The Honorable David S. Keenan  
Judge of the King County  
Superior Court

CJC NO. 9608-F-189

ANSWER OF RESPONDENT

I. Respondent, the Honorable David S. Keenan, hereby answers the Commission on Judicial Conduct's (hereinafter "Commission") Statement of Charges as follows:

I-A: Admit.

I-B: Pursuant to Commission rules, Respondent does not receive a copy of the initial referral or complaint. Nevertheless, Respondent assumes that the Commission accurately stated the date on which it was received and therefore admits this allegation.

I-C: Admit.

I-D: Admit.

I-E: Admit.

II. Respondent Judge Keenan admits that a photograph, which identified him as a graduate of North Seattle College (which was previously known as North Seattle Community College, a not-for-profit state college) and a Superior Court judge who "started at North," appeared for a short period of time on Metro buses in or around August and September of 2019.

1 When informed by the King County Presiding Judge that other judges complained about this,  
2 Judge Keenan immediately contacted administrators at North Seattle College and asked them to  
3 discontinue the bus student recruitment campaign. Respondent denies that the foregoing violated  
4 any judicial Canon of Judicial Conduct (hereinafter “CJC”) or in any manner allowed others to  
5 “misuse, his judicial position to advance the personal or economic interest of others,” as alleged.  
6

7 **III.** Respondent Judge David Keenan again denies that his actions violated the CJC,  
8 for reasons stated *infra*.

9 **IV. JUDGE KEENAN’S AFFIRMATIVE DEFENSES**

10 **A. Background**

11 In answer to the Commission’s Statement of Conduct Giving Rise to Charges, Judge  
12 Keenan provides the following circumstances relevant to the issues contested in this matter.  
13

14 Judge Keenan, a graduate of North Seattle College was asked to appear on a recruitment  
15 advertisement for prospective students for North Seattle College. He researched and relied upon  
16 the Code of Judicial Conduct and a Judicial Ethics Opinion before agreeing to appear on this  
17 recruitment poster.

18 Judge Keenan has a deep and compelling connection to North Seattle College spanning  
19 more than three decades. Judge Keenan includes this background in part because his  
20 connections to North Seattle College are relevant to legal authorities, including the CJC and  
21 ethics advisory opinions, and his good faith reliance on these authorities supporting the  
22 conclusion that the bus recruitment ad did not violate the CJC.  
23

24 More than thirty years ago, North Seattle College played a pivotal role in helping lift  
25 Judge Keenan and his mother out of poverty. Judge Keenan spent his adolescence living in a  
26 basement duplex on a Section 8 housing voucher behind a motel along Aurora Avenue in North

1 Seattle, minutes from what was then North Seattle Community College. (North Seattle College is  
2 one of three public colleges comprising the Seattle Colleges District. The college later dropped  
3 the word “Community” from its title.) Judge Keenan, his mother, and younger sister lived on  
4 food stamps, welfare checks and food bank donations.  
5

6 By the time he was 16 years old, Judge Keenan had been a juvenile defendant in King  
7 County Superior Court, and had been suspended long-term three times from the Seattle Public  
8 Schools. After his third semester-long school suspension in 1987 from Garfield High School,  
9 Judge Keenan decided to drop out of school altogether. At the time, Judge Keenan was working  
10 full-time at a Jack in the Box restaurant in North Seattle, helping to support himself, his mother  
11 and sister. During each school suspension, Judge Keenan was sent to the John Marshall School  
12 in Seattle, where troubled youth mostly bided their time, dealing with trauma at home, teenage  
13 parenting, and chemical dependency. Judge Keenan told John Marshall Principal Jim Simmons  
14 that he was dropping out, and Principal Simmons urged him to consider at least taking the GED  
15 exam at North Seattle Community College.  
16

17 In 1988, when he was 17 years old, Judge Keenan took the GED exam and did so well  
18 that North Seattle’s Dean of Student Development wrote Judge Keenan in December 1988 and  
19 encouraged him to attend college. Judge Keenan was so inspired by the encouragement from  
20 North Seattle Community College, that he studied for his high school diploma through the  
21 college’s Adult High School Completion Program. Judge Keenan took high school and college  
22 level classes at the college, while working full-time at Jack in the Box. In the summer of 1989,  
23 Judge Keenan received his high school diploma from North Seattle Community at age 18.  
24

25 In 1990, Judge Keenan began working towards his two-year transfer degree at North  
26 Seattle College, attending college full-time during the day, and working full-time at night as a

1 security guard. He graduated Phi Theta Kappa (the honor society for two-year colleges) in 1992  
2 with his two-year degree from North Seattle Community College, transferring to the University  
3 of Washington.

4 Judge Keenan worked full-time while attending the University of Washington, left school  
5 as a junior to work as a federal law enforcement agent in San Diego, earned his four-year degree  
6 while working full-time in law enforcement, and many years later earned his law degree at age  
7 38 while still working full-time in law enforcement. Judge Keenan left law enforcement after  
8 graduating law school to work at a global law firm, he served as Board President at Northwest  
9 Justice Project and for the Federal Bar Association for the Western District of Washington, and  
10 won a contested election to an open seat on the King County Superior Court in 2016.

11  
12  
13 **B. Judge Keenan was Asked to Appear in Ad for North Seattle College and**  
14 **Researched and Relied Upon the Code of Judicial Conduct and Ethics**  
**Opinions Before Agreeing to the Ad**

15 Following Judge Keenan’s speech as the Key Note Speaker at the 2019 North Seattle  
16 College Adult Basic Education Program (the same program Judge Keenan had graduated from  
17 some 30 years earlier) commencement, he became more involved with the college. Judge  
18 Keenan joined the college’s President’s Advisory Council, and was asked in July of 2019 if he  
19 would consider appearing in a bus recruitment campaign for the college. As Judge Keenan  
20 waited for the college to send him a mockup of the proposed ad, he reviewed the Code of  
21 Judicial Conduct and the Ethics Advisory Committee Judicial Ethics Opinions for guidance as to  
22 whether he could appear and identify himself as a judge in any such ad.

23  
24 Judge Keenan consulted the Code of Judicial Conduct before agreeing to appear in the  
25 ad. Judge Keenan relied in part on CJC Rule 3.7 regarding “Participation in Educational,  
26 Religious, Charitable, Fraternal, or Civic Organizations and Activities.” CJC R. 3.7.

1 Judge Keenan also relied on CJC Rule 3.1 regarding “Extrajudicial Activities in  
2 General,” and on the comments to Rule 3.1, which provide in part that, “[p]articipation in both  
3 law-related and other extrajudicial activities helps integrate judges into their communities,” CJC  
4 Rule 3.1, cmt. 1., and “judges are permitted and encouraged to engage in educational . . .  
5 extrajudicial activities not conducted for profit, even when the activities do not involve the law,”  
6 CJC Rule 3.1, cmt. 1 (referring to CJC Rule 3.7). He also reviewed CJC Rule 1.3 regarding  
7 “Avoiding Abuse of the Prestige of Judicial Office.”  
8

9 In addition to the Code of Judicial Conduct, Judge Keenan reviewed Ethics Advisory  
10 Committee Judicial Ethics Opinion 96-06, which asked whether “a judicial officer [could] appear  
11 on a law school’s video which is sent to prospective students describing the law school,” where  
12 the judicial officer was an alumnus and former faculty member, and would be “speaking about  
13 the experiences she had as both a student and a faculty member and the quality of the education  
14 at the law school.” Wash. Judicial Ethics Op., No. 96-06, 1996 WL 34540244 (Wash. Ethics  
15 Advisory Comm. May 10, 1996). The Ethics Advisory Committee answered yes, explaining:  
16

17 CJC Canon 4(A)<sup>1</sup> provides that judicial officers may speak and participate in other  
18 activities concerning the law, the legal system and the administration of justice.  
19 Therefore, a judicial officer may appear in a law school video which is sent to  
20 prospective students. The judicial officer may be identified as a judicial officer.

21 *Id.* The Opinion concludes that while CJC prohibited a judicial officer from using the prestige of  
22 the office to advance private interests of others, nevertheless:

23 Appearance in the video does not fall under CJC Canon 2(B)<sup>2</sup> which prohibits a  
24 judicial officer from using the prestige of the judicial office to advance the private  
interests of others. The judicial officer may contribute to the improvement of the

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25 <sup>1</sup> The relevant portion of former CJC R. 4(A) was later expanded to embrace more extrajudicial  
activities and recodified as CJC R. 3.1, which Judge Keenan relied upon in part.

26 <sup>2</sup> The relevant portion of former CJC R. 2(B) was later revised and recodified as CJC R. 1.3, which the  
Commission alleges Judge Keenan violated.

1 legal system and the administration of justice by assisting law schools in  
2 recruiting the most qualified individuals into the legal profession.

3 *Id.* Given that the CJC was expanded to embrace numerous extrajudicial activities, regardless of  
4 their direct connection with the law, Judge Keenan reasonably relied on Ethics Advisory Opinion  
5 96-06 in concluding that he too could identify himself as a judicial officer when trying to recruit  
6 non-traditional learners (e.g., high school dropouts like Judge Keenan) riding on public transit, to  
7 a state community college.

8  
9 **C. King County Presiding Judge Notifies Judge Keenan that Unidentified  
Judges are Concerned About the Ad**

10 On August 30, 2019, Judge Keenan learned that some of his colleagues were concerned  
11 about the bus ad, which was the first time Judge Keenan heard that anyone was concerned. The  
12 Presiding Judge informed Judge Keenan that there were concerns from other, unidentified  
13 judges, concerning the bus ad. Judge Keenan was not informed that a complaint had already  
14 been made to the Commission.  
15

16 **D. After Hearing of the Presiding Judge's Specific Concerns, Judge Keenan  
Immediately Asks North Seattle College to Discontinue the Ad**

17 After speaking with the Presiding Judge on September 4, 2019, Judge Keenan contacted  
18 North Seattle College to ask that the college immediately discontinue the ad. While Judge  
19 Keenan continues to believe that the ad did not violate the CJC, nevertheless having heard of a  
20 colleague's concerns, Judge Keenan wanted to avoid any further concerns from unidentified  
21 judges.  
22

23 **E. After Hearing the Presiding Judge's Specific Concerns, Judge Keenan  
Contacts Shannon Hinchcliffe With the Administrative Office of the  
24 Courts, and Tells Ms. Hinchcliffe About the Bus Ad**

25 Also the same afternoon he spoke with the Presiding Judge on September 4, 2019, Judge  
26 Keenan tried to contact Shannon Hinchcliffe in the Office of Legal Services and Appellate Court

1 Support at the Administrative Office of the Courts. Judge Keenan and Ms. Hinchcliffe spoke by  
2 phone the next morning, on September 5, 2019. Judge Keenan shared the background of the bus  
3 ad, and the two discussed the CJC.

4  
5 **F. After Speaking With Shannon Hinchliffe, Judge Keenan Contacted**  
6 **Commission on Judicial Conduct Executive Director Reiko Callner and**  
7 **Self-Reports the Ad Issue, Unaware that a Person Had Already Filed a**  
8 **Complaint with the Commission**

9 After speaking with Ms. Hinchcliffe on September 5, 2019, Judge Keenan contacted  
10 Commission Executive Director Reiko Callner that same day, and self-reported the bus ad issue.  
11 When Judge Keenan contacted Director Callner to self-report the bus ad on September 5, 2019,  
12 Judge Keenan was not aware and was not then informed that the Commission had already  
13 received a complaint about the bus ad on August 30, 2019.

14 **G. CJC Canons Allow the Bus Recruitment Ad**

15 CJC Rules 3.1 and 3.7 allowed Judge Keenan to appear in the bus ad, and Judge Keenan  
16 relied on these Rules and Ethics Opinion 96-06 when he agreed to appear in the ad.

17 Rule 3.1 allows for and encourages extrajudicial activities, regardless of whether they are  
18 related to the law, such as the bus ad. Rule 3.1, cmt. 1 reminds judges that “*both* law-related and  
19 other extrajudicial activities help[ ] integrate judges into their *communities*,” and adds that judges  
20 are not just allowed, but rather “permitted *and encouraged to engage in educational . . .*  
21 *extrajudicial activities not conducted for profit, even when those activities do not involve the*  
22 *law.*” Rule 3.1, cmt. 1 (emphasis added). By appearing in an ad for a state college, based on his  
23 connection to the school and his hope of encouraging other non-traditional learners to attend  
24 college, Judge Keenan was acting entirely consistent with Rule 3.1, comment 1’s encouragement  
25 that judges engage in extrajudicial activities relating to education to help them integrate with  
26 their communities, even where the extrajudicial activity does not relate to the law. In addition, in

1 reference to encouraging judges to engage in extrajudicial activities relating to education, outside  
2 of the law, Rule 3.1, comment 1 specifically directs judges to Rule 3.7. CJC R. 3.1, cmt. 1  
3 (referencing “extrajudicial activities” and then directing judges to see Rule. 3.7).

4 Rule 3.7 allows the bus recruitment ad because it includes extrajudicial activities relating  
5 to education outside of the law. Rule 3.7 provides that judges may participate in activities  
6 sponsored by organizations concerned with the law, “*and those sponsored by or behalf of*  
7 *educational . . . organizations not conducted for profit,*” CJC Rule 3.7 (emphasis added), and  
8 “[t]he activities permitted by Rule 3.7 generally include those sponsored by or undertaken on  
9 behalf of public or private not-for-profit *educational institutions*, and other not-for-profit  
10 organizations, including law-related charitable, and other organizations,” CJC Rule 3.7, cmt. 1  
11 (emphasis added). Therefore, consistent with Rule 3.1, comment 1, the activities allowed under  
12 Rule 3.7 includes activities done on behalf of a non-profit educational institution like North  
13 Seattle College. This reading is also consistent with Ethics Advisory Opinion 96-06, which  
14 interpreted the analogous rules under the former CJC and concluded that a judge did not abuse  
15 the prestige of office by being identified as a judge in a recruiting promotion for an educational  
16 institution.

17 Importantly, not every “use” of the judicial title in extrajudicial activities is “abuse.” As  
18 the Arizona Supreme Court Judicial Ethics Advisory Committee put it:

19 Rule 1.3 prohibits ‘abuse’ of the prestige of judicial office, not simply ‘use.’

20 . . . .

21 In several contexts, the Code permits judges to ‘use’ the prestige of judicial office  
22 in extra-judicial activities. . . . The Code *implicitly* deems such extra-judicial  
23 activities proper ‘uses’ of the prestige of judicial office, as opposed to ‘abuses.’



1 Op., No. 18-01, 2018 WL 2760978, at \*3 (Ariz. Supreme Ct. Judicial Ethics Advisory Comm.  
2 Apr. 30, 2018) (emphasis added).

3 The Washington Ethics Advisory Committee reached the same conclusion in Ethics  
4 Opinion 96-06. Judge Keenan’s appearance in the bus ad did not improperly to bring to bear the  
5 prestige of judicial office, but rather to inspire prospective community college students.  
6

7 **H. Rule 1.3 is Not Aimed at This Type of Conduct**

8 In addition, Judge Keenan answers that CJC R. 1.3’s prohibition on the abuse of prestige  
9 of judicial office is not intended to reach the conduct alleged here. *See, e.g.*, CJR R. 1.3, cmt. 1  
10 (“For example, it would be improper for a judge to allude to his or her judicial status to gain  
11 favorable treatment in encounters with traffic officials.); *In re Lucas*, CJC No. 9137-F-187, slip  
12 op. at 2 (Comm’n on Judicial Conduct June 26, 2020) (Judge abused prestige of office by  
13 emailing city officials from the Judge’s county email, identifying himself as a judge, and  
14 objecting to a neighbor’s building permit); *In re Hitchcock*, No. 7377-F-160, 2014 WL 5493213,  
15 at \*2 (Wash. Comm’n on Judicial Conduct Oct. 3, 2014) (“[G]ratuitously identifying herself as a  
16 judge to the arresting officer . . . created, at a minimum, the appearance that she was attempting  
17 to use the prestige of office to gain favorable treatment.”); *In re Deming*, 108 Wn.2d 82, 110  
18 (1987) (Where judge told the Director of the Probation Department, ““If you want my continued  
19 support as a probation liaison judge, you will promote [name of employee with whom Judge  
20 Deming was sexually involved] to the probation supervisor position, the Judge “lent the prestige  
21 of his office to advance the private interests of another”). Judge Keenan’s conduct in appearing  
22 in a public transit ad meant to inspire non-traditional learners to attend a state community college  
23 is far removed from the conduct at the heart of CJC R. 1.3’s prohibitions.  
24  
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1           **I. Judicial Ethics Opinions From Other Jurisdiction Support Allowing the**  
2           **Bus Ad**

3                   **1. Florida**

4           Judicial ethics opinions in other jurisdictions support Judge Keenan’s appearance in  
5           the bus ad. For example, the Florida Supreme Court Judicial Ethics Advisory Committee  
6           took up essentially the same subject and question presented here. In reasoning that the judge  
7           could appear in the marketing campaign for his college, the Florida Supreme Court Judicial  
8           Ethics Advisory Committee pointed to Canon 5B of the Florida Code of Judicial Conduct,  
9           which provided that “A *judge may* speak, write, lecture, teach and *participate in other*  
10          *extrajudicial activities concerning non-legal subjects, subject to the requirements of this*  
11          *Code.”* Op., No. 97-28, 1997 WL 34770614, at \*1 (Fla. Supreme Ct. Judicial Ethics Advisor  
12          Comm. Oct. 16, 1997) (hereafter, the “Florida Opinion”) (emphasis in original).

13          Similarly, the Washington Code of Judicial Conduct provides, among other things,  
14          that “judges are permitted and encouraged to engage in educational, religious, charitable,  
15          fraternal or civic extrajudicial activities not conduct for profit, even when those activities do  
16          not involve the law,” CJC R. 3.1, cmt. 1 (which then points to CJC R. 3.7), and that “[t]he  
17          activities permitted by Rule 3.7 generally include those sponsored by or undertaken on behalf  
18          of public or private not-for-profit educational institutions,” CJC R. 3.7, cmt. 1. In both the  
19          Florida Opinion and here, the applicable rules not only do not prohibit a judge from appearing  
20          in an ad to inspire individuals to higher learning, the rules allow it.

21                   **2. New York.**

22          Like Florida, and in total similarity to this matter, the New York Advisory Committee  
23          on Judicial Ethics has also approved a judge appearing in advertising, including recruitment  
24          posters in subways, to inspire individuals to obtain higher education. Op., No. 02-21, 2002  
25          WL 34340038 at \*1-2 (N.Y. Advisory Comm. on Judicial Ethics Apr. 18, 2002). The New  
26          York Ethics Advisory Committee explained that as in the Florida case, judicial ethics rules  
                allowed a judge to appear in advertising for a college to encourage prospective students to

1 attend. Indeed, New York Op. 02-21 goes much further than what Judge Keenan did in the  
2 bus ad, allowing the judge to appear in judicial robes in subway ads, newspapers, on  
3 television, and online. *Id.* at \*1. As the New York Advisory Committee on Judicial Ethics  
4 explained in allowing the conduct, the ad campaign did not violate the prohibition on the use  
5 of the prestige of judicial office to advance the private interests of others, in part because to  
6 hold otherwise would “contravene the mandate that the Rules Governing Judicial Conduct are  
7 to be regarded as rules of reason.” *Id.*

8  
9 **3. Many other state’s ethics opinions would allow this recruitment ad**

10 While some state’s ethics rules would prohibit this college recruitment ad, some of these  
11 same jurisdictions would also prohibit the law school recruiting video expressly approved of in  
12 Washington in Opinion 96-06, and, regardless, are a minority of the jurisdictions.

13 **IV. CONCLUSION**

14 There is no prohibition in the CJC on appearing in promotional material for a community  
15 college. To the contrary, the CJC encourages this conduct, and Judge Keenan followed the Code  
16 and relied on the Ethics Advisory Committee Opinion in appearing in the bus recruitment ad.

17  
18 People like Judge Keenan who might not have finished high school or who lacked certain  
19 advantages, or for whatever reason started behind others or got off track somewhere, need to see  
20 people like Judge Keenan in roles like his, and they need to know where people like Judge  
21 Keenan started—at a community college—so they can imagine themselves back at school and in  
22 a career as well, even though they didn’t take a traditional path. Judge Keenan did not violate the  
23 Code of Judicial Conduct when he appeared in the bus recruitment ad, and concluding otherwise  
24 would also, as a matter of policy, undermine the Code’s encouragement of judicial involvement  
25 in education, promoting public understanding of and confidence in the administration of justice,  
26 and promoting access to justice for all.

1 The Commission is therefore urged to dismiss these charges and declare that the bus  
2 recruitment ad was permitted under the CJC and that Judge Keenan acted properly.

3 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of July, 2020.  
4

5  
6 /s/ David Allen  
7 DAVID ALLEN, WSBA #500  
8 Attorney for the Honorable David S. Keenan  
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