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COMMISSION ON JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

OF THE STATE OF WASHINGTON

In Re the Matter of HONORABLE A. EUGENE HAMMERMASTER, Judge Sumner and Orting Municipal Courts, Pierce County, Washington	CJC No. 3210-F-94 **STATEMENT OF CHARGES**

Pursuant to authority granted in Washington State Constitution Article IV, Section 31, Chapter 2.64 RCW, and the Commission on Judicial Conduct Rules of Procedure ("CJCRP"), the Commission on Judicial Conduct ("Commission") ordered this Statement of Charges alleging violations of the Code of Judicial Conduct by the Honorable A. Eugene Hammermaster.

I. BACKGROUND

A. The Honorable A. Eugene Hammermaster (Respondent) was a judge of the Sumner, Orting, and Wilkeson/South Prairie Municipal Courts in Pierce County, Washington. He did not serve as judge for a six-month period commencing October 21, 1999, at which time the State Supreme Court ordered his suspension from all judicial duties (*Discipline of Hammermaster*, 139 Wn.2d 211, 1999) pursuant to a prior Commission action, (*In Re the Matter of Honorable A. Eugene Hammermaster, Judge*, CJC No. 95-1937-F-67). Wilkeson/South Prairie Municipal Court ceased to engage Respondent as judge as of January 1, 2001. He resumed the position of judge in Orting

and Sumner as of April 24, 2000. The prior opinions of the Commission and State Supreme Court are incorporated by reference herein.

B. On June 20, 2001, the Commission, acting pursuant to CJCRP 17(e), served Respondent with a Statement of Allegations. Respondent requested an indefinite extension of time to respond to the Statement of Allegations. The Commission's Chair ordered an extension of time to August 13, 2001. Respondent provided a response to the Statement of Allegations, dated August 10, 2001 and received on August 13, 2001. Respondent provided a response to the Statement of Allegations, dated August 10, 2001.

II. FACTS SUPPORTING CHARGES

A. Respondent, by conduct including but not limited to that indicated below, violated Canons 1, 2(A) and 3(A)(1) of the Code of Judicial Conduct, by engaging in a pattern and practice of violating criminal defendants' fundamental due process and other constitutional and statutory rights and protections, and demonstrating a failure to maintain competence in the law, during the period of time following his resumption of judicial duties since April 2000.

1. Respondent approved, and as a regular practice has used, forms and court documents which do not conform to the requirements of the State Supreme Court, applicable statues and court rules, and which violate the due process rights of defendants. These forms include a "Statement of Defendant on Plea of Not Guilty" (Exhibit A(i) and A(ii), attached) and "Statement of Defendant on Plea of Guilty," (Exhibit B, attached).

2. Respondent had a regular practice of failing to properly advise defendants of their rights or to comply with constitutional due process requirements at arraignments. Respondent consistently failed to affirmatively advise defendants that they have a right to counsel and to jury trial, and required defendants pleading not guilty to sign a document waiving their rights to counsel and to jury trial, without explaining those rights to them. These behaviors are illustrated by, but not limited to, the following examples:

- *City of Orting v. Donald Navarro*, C 1501, hearing on October 3, 2000
- *City of Sumner v. Ruth Reed*, COD010008, hearing on May 16, 2001
- *City of Orting v. Raymond Gorham*, C991, hearing on May 2, 2000
- *City of Orting v. Deborah Ann Brinks*, C1397, hearing on May 2, 2000.

3. Respondent has engaged in a regular practice of failing to properly accept guilty pleas from pro se defendants. Respondent consistently failed to advise defendants of the elements of the crimes to which they plead guilty; and consistently failed to determine their understanding of the proceedings. Respondent accepted guilty pleas without obtaining an adequate factual basis for the plea and without taking the plea in the manner required by law. Respondent generally failed to warn pro se defendants of the maximum penalty or mandatory minimums of crimes to which they plead guilty. These behaviors are illustrated by, but not limited to, the following examples:

- *City of Orting v. Michael C. Dewitt*, C1717, hearing on October 3, 2000
- *City of Sumner v. Shawn P. Bengard*, Y73501, hearing on April 25, 2000
- *City of Orting v. Larry Dale Bishop, Jr.,* C1876, hearing on March 1, 2001
- *City of Orting v. Ronald Thompson*, C1509, hearing on April 12, 2001
- *City of Orting v. Diane Searls*, C982, hearing on August 11, 2000
- *City of Sumner v. Ronald Markle*, C13160, hearing on April 25, 2000.

4. Respondent had a regular practice of failing to properly conduct Failure to Comply hearings with pro se defendants. Respondent failed to advise pro se defendants that they have a right to counsel at such hearings, that they have a right to contest the allegations, and that they have a right to a hearing regarding whether the violation was committed. Respondent shifted the burden of proof as to whether a violation occurred to such pro se defendants on a regular basis. Respondent, as a regular pattern or practice, improperly revoked deferred and suspended sentences for pro se defendants for failure to pay, despite their inability to pay monetary fines or costs. Further, Respondent regularly failed to give pro se criminal defendants credit for jail time served in pursuing delinquent monetary payments by those defendants.

Respondent threatened to require that defendants pay $50 a day for each day they were are incarcerated as a result of being unable to pay fines. These behaviors are illustrated in, but not limited to, the following examples:

- *City of Orting v. Robert Allen*, C703, hearing on December 28, 2000
- *City of Sumner v. Carrie Ann Melfi*, C11875, C12069, C12486, and C13040, hearing on April 25, 2000
- *City of Orting v. Tane Kephart*, C1496, hearing on April 23, 2001
- *City of Orting v. Richard A. Boesl*, C1220 and C1221, hearings on August 15, 2000 and March 15, 2001
- *City of Orting v. Chun Yi*, C1003, hearings on April 3, 2001 and April 26, 2001
- *City of Orting v. Glen Lee Hannahs*, C 1648 and C1649, hearing on October 3, 2000
- *City of Orting v. Louis R. Ungaro*, C1114, hearing on October 3, 2000.

5. Respondent had a pattern or practice, when revoking continuances or deferred sentences, of conducting significant hearings and making findings adverse to defendants in matters that defendants had a due process right to contest, in the absence of the defendant. These behaviors are illustrated by, but not limited to, the following examples:

- *City of Orting v. Curtis E. Shelton,* C829, hearing on December 19, 2000
- *City of Orting v. Richard Blosl*, C1220, C1221, hearing held August 15, 2000
- *City of Orting v. Chun Sok Yi*, C1003, hearing date April 3, 2001.

6. Respondent had a regular practice of conducting unscheduled in custody hearings for pro se defendants charged by the City of Orting in his private law office, located in the City of Sumner, and in violation of RCW 3.50.110 and Article I, section 10 of the State Constitution. Respondent conducted such hearings in his private law office on, but not limited to, the following dates:

May 3, 2000, May 5, 2000, May 22, 2000, June 23, 2000, July 17, 2000, August 11, 2000, September 1, 2000, November 2, 2000, December 28, 2000, February

23, 2001, March 2, 2001, March 15, 2001, March 29, 2001, April 12, 2001, April 23, 2001, April 26, 2001.

7. Respondent had a regular practice of violating indigent defendants' constitutional and statutory rights to the appointment of counsel , by conducting inquiries about the defendant's personal financial information orally in open court, by denying court-appointed counsel to defendants who statutorily qualified, by charging more for recoupment than the court was charged for such services, and in other ways that violated the mandates of RCW 10.101 *et seq.* The conduct of such hearings was demeaning and humiliating toward defendants. This behavior is illustrated by, but not limited to, the following examples:

- *City of Sumner v. Casey Ann Pulley*, C14251, C14252, C14253, C14254, hearing held on May 16, 2001
- *City of Orting v. Leon James Forvour*, C1564, C1565, hearing held on October 3, 2000
- *City of Orting v. Mistey Ann Nickerson*, C1566, hearing held on October 3, 2000
- *City of Orting v. Timothy C. Reed, Jr.*, C1840 and C1841, hearing held on November 2, 2000.

8. Respondent, as the judge of South Prairie and the judge of the City of Orting, failed to conduct timely probable cause hearings for defendants taken into custody by law enforcement without a warrant as is constitutionally required by *McGlaughlin v Riverside*, 500 U.S. 44, 56-57, 114 L. Ed. 2d 49, 111 S. Ct. 1661 (1991). As a consequence, defendants were held in custody for longer than the 48 hours permitted under the constitution and case law. This behavior is illustrated by, but not limited to, the following examples:

- *City of Sumner v. Shawn Bengard*, Y73501
- *City of Sumner v. Ronald Markle,* C13160
- *City of Orting v. Chun Sok Yi*, C1003
- *City of Orting v. Timothy C. Reed, Jr.*, C1840 and C1841

- *City of Sumner v. Arno Peter Creech,* C00013474.

B. Respondent engaged in a pattern and practice of issuing illegal orders beyond his judicial authority, failed to maintain competence in the law, and failed to comply with the law, by the conduct including but not limited to that indicated below.

1. Respondent has ordered defendants banished from the jurisdiction in cases including but not limited to:

- *City of Orting v. Burt W. Ellis*, C1052
- *City of Sumner v. Sylvia Ruth Nelson*, C12856
- *City of Orting v. Richard Wayne Whitmeyer,* C995
- *City of Sumner v. Dwayne Bateman*, 990205101

2. Respondent has regularly ordered defendants, as part of their sentences in driving while license suspended cases, to divest themselves of any ownership interest in a motor vehicle while not validly licensed or insured. Although the Superior Court unequivocally reversed one such order in September of 2000, Respondent continued to engage in this practice This behavior is illustrated by, but not limited to, the following cases:

- *City of Sumner v. Johnny Clay Anderson*, C00012714
- *City of Sumner v. Monte Ray Tone,* C00012421
- *City of Sumner v. Wade Alan Krebs*, C00013558
- *City of Orting v. Wesley Scott Gibbs,* C00001837
- *City of Sumner v. Johnathan Bottles,* C13881
- *City of Orting v. Diane Searls*, C982.

C. Since resuming courtroom duties in April of 2000, Respondent has engaged in a pattern or practice of undignified courtroom demeanor with criminal defendants, subjecting them to rude and demeaning treatment. This treatment includes repeatedly interrupting defendants; engaging in protracted and repeated questioning of them regarding their inability to obtain employment or their reasons for violating the law or court orders, requiring oral disclosure of personal information on the record regarding

the exercise of their rights as defendants in a fashion which is humiliating, belittling, and abusive; and otherwise failing to conduct himself in a judicious and professional manner. Respondent demonstrated such behaviors as illustrated in, but not limited to, the following examples:

- *City of Orting v. Leon Forvour,* C1564 and C1565 hearings on August 15, 2000 and October 3, 2000
- *City of Orting v. Mistey Nickerson*, C 1566 hearing on October 3, 2000
- *City of Sumner v. Johnny Anderson*, C12714, hearing on April 26, 2000
- *City of Sumner v. Tracy Kohn*, C12665, hearing on April 26, 2000
- *City of Orting v. John Lund*, C1289, C1290, C24, C25, C1355, C867, C148, C149, hearing on May 5, 2000
- *City of Sumner v. Robert Dean Brown,* Y245001, hearing on May 16, 2001
- *City of Orting v. Tane Kephart*, C1496, hearing on April 23, 2001
- *City of Orting v. Trevor Bresnahan*, C 1904 and C1905, hearing on April 23, 2001
- *City of Orting v. Glen Lee Hannahs*, C 1648 and C1649, hearing on October 3, 2000
- *City of Orting v. Louis R. Ungaro*, C1114, hearing on October 3, 2000.

III. BASIS FOR COMMISSION ACTION

The Commission has determined that probable cause exists to believe that Respondent has violated Canons 1, 2(A), 3(A)(1), and 3(A)(3) of the Code of Judicial Conduct (CJC) which state:

CANON 1

Judges shall uphold the integrity and independence of the judiciary.

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

Comment

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

CANON 2

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

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

CANON 3

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

The judicial duties of judges should take precedence over all other activities. Their judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

(A) Adjudicative Responsibilities.

(1) Judges should be faithful to the law and maintain professional competence in it. . . .

. . . .

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

IV. RIGHT TO FILE A WRITTEN ANSWER

In accordance with CJCRP 20, Respondent shall file a written answer to this Statement of Charges with the Commission and serve a copy on disciplinary counsel in this matter, Paul Taylor at 1000 Second Avenue, Seattle, WA, 98104, 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 8th day of October, 2001.

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

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