

FILED
AUG 28 2007
COMMISSION ON JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

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In Re the Matter of
The Honorable Mark C. Chow,
Judge of the King County District Court

No. 5299-F-134

STATEMENT OF CHARGES

I. BACKGROUND

Judge Mark C. Chow ("Respondent") is now, and was at all times referred to in this document, a King County District Court Judge. On February 15, 2007, the Commission on Judicial Conduct ("Commission") received a phone call from attorney Anne Bremner, who said that she had a client, Judge Mark Chow, who wished to self report a complaint, although she provided no further information at that time about the nature of the complaint. Later that day, a representative of the King County District Court called the Commission office, asking whether the Commission office could confirm that the Commission had received a self-reported complaint from a King County District Court judge. The court representative provided, at the request of Commission investigative staff, an audio recording of hearings held before Judge Chow in which he made some of the comments that are the subject of this case. In response to inquiry by Commission staff, witnesses at the court reported several other arguably inappropriate comments made on other occasions by Judge Chow and again, pursuant to request, provided audio recordings of the hearings in question. It is the practice of the Commission to both verify alleged comments made by judges that may violate the Code of Judicial Conduct by review of the available record, and to review records to determine context and whether such comments are isolated incidents or part of a pattern of

1 behavior.

2 On February 26, 2007, Respondent, with his attorney Anne Bremner, in a
3 telephone call with Commission staff, reported a single incident of the judge making
4 an injudicious comment which had occurred on January 23, 2007. Investigation of
5 the complaints resulted in the present charges.

6 On April 9, 2007, the Commission formally informed Respondent by letter
7 that the Commission was commencing initial proceedings against him, following
8 preliminary investigation. A Statement of Allegations was enclosed and a response
9 was invited. Respondent's response to the Statement of Allegations was received
10 on May 2, 2007, and considered by the Commission at its regular meeting on June
11 8, 2007. At that time, the Commission declined the judge's request to dismiss the
12 matter and instead continued this action in the confidential initial proceedings phase
13 of investigation. Based on that decision, the Commission staff conducted further
14 investigation and engaged in discussions with Respondent's counsel regarding
15 possible agreed resolutions of this matter prior to the next meeting of the
16 Commission. An agreed resolution was not reached.

17 At the August 3, 2007 meeting, the Commission found probable cause that
18 Respondent violated the Code of Judicial Conduct and authorized the issuance of a
19 Statement of Charges.

20 21 **II. CONDUCT GIVING RISE TO CHARGES**

22 Respondent is charged with violating Canons 1, 2(A), 3(A)(2), 3(A)(3), and
23 3(A)(5) of the Code of Judicial Conduct. Respondent is charged with failing to
24 maintain courtroom decorum; making comments that were, or that were reasonably
25 perceived to be, undignified, discourteous and disrespectful; and using language
26 that reasonably appeared to manifest bias or prejudice and that diminished
27 confidence in the dignity and impartiality of judicial office.

28 The comment self-reported by Respondent took place on January 23, 2007.

1 When presiding over the jail courtroom, a defendant told Respondent to “suck my d-
2 -k,” and Respondent replied “I would if you pulled it out but you can’t find it.” The
3 Commission’s review of the audio recording that had been obtained from the court
4 showed that on the same date, while presiding over Mental Health Court,
5 Respondent asked a female defendant, “What flavor are you?” When the defendant
6 responded that she was half Japanese, Respondent asked, “No Chinese? See I’m
7 Chinese.” After the woman confirmed she was not Chinese, Respondent said,
8 “That’s okay. My wife’s Japanese, you’ve got some good.” To the next defendant,
9 also a female, Respondent said that “I think I know what flavor you are so I’m not
10 even going to ask.”

11 12 **III. BASIS FOR COMMISSION ACTION**

13 On August 3, 2007, the Commission determined that probable cause exists
14 to believe that Respondent has violated Canons 1, 2(A), 3(A)(2), 3(A)(3), and
15 3(A)(5) of the Code of Judicial Conduct. These sections of the Code state:

16 **CANON 1**

17 **Judges shall uphold the integrity and 18 independence of the judiciary.**

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

25 *Comment*

26 *Deference to the judgments and rulings of courts depends upon public confidence in the
27 integrity and independence of judges. The integrity and independence of judges depends in turn
28 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.*

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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.

...

Comment

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities.

The testimony of judges as character witnesses injects the prestige of their office into the proceeding in which they testify and may be misunderstood to be an official testimonial. This canon however, does not afford judges a privilege against testifying in response to a subpoena.

CANON 3

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

(A) Adjudicative Responsibilities.

...

(2) Judges should maintain order and decorum in proceedings before them.

...

(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.

...

(5) Judges shall perform judicial duties without bias or prejudice.

Comment

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

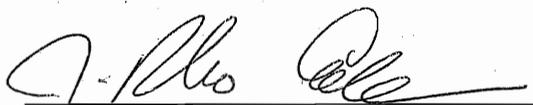
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IV. RIGHT TO FILE A WRITTEN ANSWER

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 within twenty-one (21) days after the date of service of the Statement of Charges.

DATED this 3rd day of August 2007.

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON



Reiko Callner
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