

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED
AUG 03 1990

In Re the Matter of:)
)
The Honorable James M. Murphy,)
Judge,) NO. 89-878-F-16
Spokane County Superior Court)
W. 1116 Broadway) COMMISSION DECISION
P. O. Box 470)
Spokane, Washington 99260-0090)
_____)

COMMISSION ON
JUDICIAL CONDUCT

1 A Fact-Finding Hearing was held pursuant to Commission on
2 Judicial Conduct Rules (CJC) as ordered by the Commission on
3 Judicial Conduct ("The Commission") on June 18, 1990. A factual
4 stipulation was entered into between Respondent and the Commission
5 on June 18, 1990.

6 Members of the Commission present as fact-finders were:
7 Joseph H. Davis, Chairperson; Nancyhelen Fischer; Diane Janes; the
8 Honorable Thomas E. Kelly; Santos Ortega; the Honorable John A.
9 Petrich; Hal Reasby; Steven Reisler; the Honorable Donald H.
10 Thompson; and Todd Whitrock.

11 Respondent was present in person and represented by J. Donald
12 Curran. The Commission was represented by John Gavin and Homer A.
13 Crollard. The Commission, having heard and considered the factual
14 stipulation, having heard and considered the testimony of the
15 witness called, having reviewed the records and files herein, and
16 having considered the arguments of counsel at the hearing, finds by
17 clear, cogent and convincing evidence the following:

18 FINDINGS OF FACT

19 I.

20 Respondent is now and at all times mentioned herein was a
COMMISSION DECISION - 1

1 Judge of the Spokane County Superior Court, Washington.

2 II.

3 On May 20, 1989, at about 10:40 p.m. in the vicinity of Monroe
4 and Cleveland Streets in Spokane, Washington, Respondent was cited
5 for driving under the influence of intoxicants and traveling 43
6 miles per hour in a 30 mile per hour zone (speeding). Respondent
7 was so charged in a case captioned City of Spokane, Plaintiff, v.
8 James M. Murphy, Defendant, being District Court Cause No. E005351.
9 Respondent entered a plea of not guilty to both charges.

10 III.

11 On the advice of his attorney, Adrian J. Voermans, Respondent
12 refused to submit to a breath test but requested a blood test,
13 which was refused.

14 IV.

15 On October 17, 1989, the Municipal Court of the City of
16 Spokane ruled inadmissible at trial any evidence of Respondent's
17 statements to the arresting officer and granted the request of the
18 Prosecutor for dismissal of the charge of driving under the
19 influence of intoxicants.

20 V.

21 On October 17, 1989, Respondent pled guilty to a charge of
22 negligent driving arising out of the same incident and was fined
23 \$475, a sum inclusive of costs, all of which has been paid.

24 VI.

25 The incident and subsequent hearings received significant
26 widespread media attention (Exhibit 1, A-J).

1 APPLICABLE CODE

2 The Statement of Charges asserts that Respondent may be in
3 violation of Canon 2(A) of the Code of Judicial Conduct which
4 states:

5 "CANON 2

6 Judges Should Avoid Impropriety
7 and the Appearance of Impropriety
8 in All Their Activities

9 (A) Judges should respect and comply with
10 the law and should conduct themselves at all
11 times in a manner that promotes public
12 confidence in the integrity and impartiality
13 of the judiciary."

14 Based upon the foregoing Findings of Fact and the applicable
15 Canon, the Commission makes the following:

16 CONCLUSIONS

17 I.

18 The Commission on Judicial Conduct has jurisdiction to act
19 herein under the Constitution of the State of Washington, Article
20 IV, Section 31, and RCW 2.64. Rules implementing said jurisdiction
21 are provided in Chapter 292-08 WAC.

22 II.

23 Respondent's actions, based upon the totality of the facts, do
24 not constitute a violation of Canon 2(A).

25 DECISION

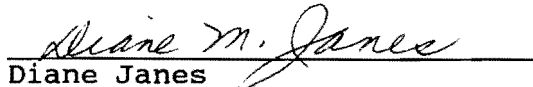
26 Based on the foregoing Findings of Fact and Conclusions, the

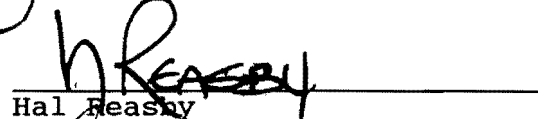
1 Commission on Judicial Conduct hereby dismisses the Statement of
2 Charges filed against the Honorable James M. Murphy.

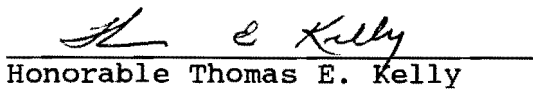
3 Dated this 3 day of August, 1990.

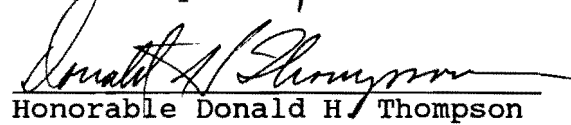

Joseph H. Davis



Honorable John A. Petrich


Diane Janes


Hal Reashy


Honorable Thomas E. Kelly


Honorable Donald H. Thompson


Santos Ortega

13 DISSENT

14 At 10:40 p.m. on May 20, 1989, the Spokane police cited the
15 Honorable James Murphy for DWI and for speeding 43 m.p.h. in a 30
16 m.p.h. zone.

17 Judge Murphy refused to take a breath-alcohol test. That
18 refusal resulted in an automatic one-year suspension of his
19 driver's license.

20 Through his legal counsel, Judge Murphy successfully moved to
21 suppress any evidence of statements made to the arresting officer.
22 The basis for the suppression was the officer's failure to advise
23 Judge Murphy of his "Miranda rights."

24 The prosecutor dismissed the charge of DWI and Judge Murphy
25 then pled guilty to "negligent driving," a criminal misdemeanor
26 which carries no jail sentence.*

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*Effective June 7, 1990, negligent driving became a jailable misde-
meanor of up to 90 days and/or a fine up to \$1,000.00.

1 These events were widely publicized. Judge Murphy later
2 appeared on local television and apologized to the people of
3 Spokane. He separately appeared before his colleagues of the
4 Spokane County Superior Court and apologized to them. Although the
5 reason for his apology to the Court was unclear, Judge Murphy
6 appeared to believe the events surrounding his arrest had caused
7 embarrassment to the local judiciary.

8 Judge Murphy admitted drinking two gin and tonics before he
9 was arrested. It is not a crime in the state of Washington to
10 drink and drive. It is a crime to drive with a breath-alcohol
11 level in excess of the legal limit, or to drive while affected or
12 influenced by alcohol. Judge Murphy would not submit to a breath-
13 alcohol test and, after the suppression of his statements to the
14 arresting officer, the DWI charge was dismissed.

15 There is nothing illegal in refusing to take a breath-alcohol
16 test. Although not illegal, it results in an automatic license
17 suspension. Refusing to take a breath-alcohol test may also make
18 prosecution for DWI more difficult.

19 There is nothing illegal in seeking the suppression of
20 evidence obtained without the administration of "Miranda rights."
21 Of course, Judge Murphy was already well aware of his "Miranda
22 rights."

23 There is nothing illegal about plea-bargaining to a lesser
24 charge. Persons charged with crimes do this all the time.

25 The ordinary citizen would not be criticized for any of these
26 actions. James Murphy, however, is a superior court judge, not an

1 ordinary citizen. The question is whether conduct acceptable for
2 an ordinary citizen is also acceptable for a judge.

3 The Commission charged James Murphy with violating Canon 2(A)
4 of the Code of Judicial Conduct. The Code states in relevant part:

5 **"CANON 2**

6 **Judges Should Avoid Impropriety**
7 **and the Appearance of Impropriety**
8 **in All Their Activities**

9 (A) Judges should respect and comply with
10 the law and should conduct themselves at all
11 times in a manner that promotes public
12 confidence in the integrity and impartiality
13 of the judiciary."

14 Canon 2 is both a positive and negative precept. It asks judges to
15 respect and comply with the law. It also requires judges to
16 conduct themselves at all times in a manner that actually promotes
17 public confidence in the integrity of the judiciary. Judge Murphy
18 violated both the positive and the negative precepts of Canon 2.
19 First, he pled guilty to negligent driving. Negligent driving is
20 the least serious criminal misdemeanor. Nevertheless, Judge Murphy
21 correctly defined negligent driving as the operation of a vehicle
22 in such a manner as to endanger or be likely to endanger any
23 persons or property. It may be a non-jailable misdemeanor, but it
24 is classified as a criminal traffic offense.

25 Second, although Judge Murphy was within his rights in (a)
26 drinking and driving and then declining the breath-alcohol test,

1 (b) moving to suppress evidence because he had not been advised of
2 his "Miranda rights," and (c) plea bargaining to a lesser charge .
3 . . this was not conduct "that promotes public confidence in the
4 integrity and impartiality of the judiciary." The public
5 impression was that the judge "beat the charge." This is an
6 unfortunate impression because Judge Murphy may or may not have
7 been driving under the influence of alcohol at the time of his
8 arrest. The charge was ultimately dismissed and all the facts may
9 never be known. Whether Judge Murphy was or was not DWI, however,
10 is not the issue before the Commission. The sole question is
11 whether his conduct violated Canon 2 of the Code of Judicial
12 Conduct.

13 Canon 2(A) clearly states that a judge's conduct will be held
14 to a higher standard. It is not enough to do no wrong; conduct is
15 also forbidden judges which appears to do wrong. Why should judges
16 be held to a higher standard than the average citizen?

17 The superior court judge sits on a dais above everyone else.
18 The judge wears black robes, different from everyone else. The
19 bailiff commands the courtroom to rise out of respect for the
20 judge. The judge is addressed as "Honorable," not as Mr. or Ms.
21 The superior court judge has power to impose fines and penalties,
22 freedom or confinement. The judge tells others what the law is and
23 can decide who has violated the law. It is an awesome power, and
24 we should expect that those who wield that power will themselves be
25 held to a higher standard of conduct. The administration of
26 justice works only if the citizenry believes that it works. It is

1 a matter of public trust. Even the appearance of impropriety can
2 erode that trust.

3 The Commission should, by its actions, send clear messages to
4 our judges. Sanctioning Judge Murphy would not require us to
5 discipline every judge who over-parked her car, who drove too fast
6 or who jay-walked. These are typically minor traffic infractions
7 which would not rise to the level of public scrutiny. Judge
8 Murphy, however, did not act prudently at the time of and after his
9 arrest for DWI, nor did he conduct himself in a manner that
10 promotes public confidence in the judiciary. His conduct, together
11 with his plea of guilty to a criminal misdemeanor, must warrant
12 some sanction or the Commission could, indeed, send the wrong
13 message.

14 The affiants who testified on Judge Murphy's behalf all agreed
15 that his judicial service was distinguished; his judgment, honesty,
16 integrity, and efficiency all unparalleled. We have no reason to
17 doubt those attributes.

18 For his violation of Canon 2, however, based on the facts
19 presented to the Commission, Judge Murphy should be admonished. By
20 definition, an admonishment by the Commission on Judicial Conduct
21 is advisory in nature and cautions a judge not to engage in certain
22 proscribed behavior.

23 Judge Murphy, by this one isolated series of events, did not
24 respect or comply with the law, and he did not conduct himself at
25 all times in a manner that promotes public confidence in the
26 judiciary. The Commission should at least admonish him not to so

1 conduct himself in the future.


2 Dated this 3 day of August, 1990.

3




Steven A. Reisler

We concur in Steven Reisler's opinion.



Nancyhelen Fischer



Todd Whitrock