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COMMISSION ON JUDICIAL CONDUCT

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BEFORE THE COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON

In Re the Matter of:	)	
	)	No. 2511-F-85
Honorable George W. Colby, Judge	)	
Yakima County District Court	)	ANSWER TO STATEMENT OF
128 N. 2 <sup>nd</sup> Street	)	CHARGES
Yakima, WA 98901-2614	)	
	)	
	)	

COMES NOW the Respondent, The Honorable George Wynn Colby, by and through his attorney Rickey C. Kimbrough, and answering the Statement of Charges herein, admits, denies and alleges that:

**A. Answer to Paragraph A Captioned Background; General Denial and Assertion of Defenses as to Factual Allegations**

A.i Respondent admits the chronology of events set forth in paragraph A of the Statement of Charges, and further acknowledges the jurisdiction of the Commission except as hereinafter specifically denied paragraph A of the Statement of Charges. Respondent denies, as implied or may be inferred in the aforesaid paragraph, that Respondent has in any way failed to cooperate with the investigation of the complaint or complaints referred to in said paragraph, and by way of explanation alleges that Respondent has both timely and in good faith fully responded to all preliminary inquiries of the Commission as well as the Statement of Allegations and Amended Statement of Allegations which have been previously served upon him. The allegations set forth in the above referenced paragraph are impertinent, irrelevant and immaterial to the proceedings now before the Commission; fail in whole or in part to set forth any claim upon which relief may be

ANSWER TO STATEMENT OF  
CHARGES - 1

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1 granted, and more specifically fail to allege facts constituting a violation of any  
2 Canon of Judicial Conduct as now adopted by the Washington State Supreme  
3 Court. Respondent moves to strike the entirety of Paragraph A., Background as set  
4 forth in the Statement of Charges.  
5

6 A.ii Respondent denies that he has done anything improper constituting a  
7 violation of the Canons of Judicial Conduct. All assertions, implications or inferences  
8 contained or derived from the Statement of Charges that Respondent has done  
9 anything improper in violation of any Canon of Judicial Conduct are denied. All  
10 allegations, implications and inferences to be derived from the Statement of  
11 Charges, not specifically admitted in this Answer, are denied.  
12

13 A.iii Respondent alleges that with regard to all allegations set forth in the  
14 Statement of Charges alleging, implying, or from which inferences can be drawn that  
15 Respondent failed or was unable to follow the Law, imposed unlawful conditions  
16 and penalties, or failed to impose mandatory conditions and sentences are subject  
17 to a qualified good faith privilege constituting immunity and an absolute defense to  
18 all such allegations, implications and inferences.  
19

20 B. Admissions, Denials and Allegations as to Specific Sections and  
21 Paragraphs set forth set forth in Part B of the Statement of Charges, captioned as  
22 "Facts Supporting Charges":

23 II.i Respondent admits the following specific facts alleged in  
24 paragraph II.i of the Statement of Charges: That on November 15, 1995,  
25 Respondent presided over a fourth degree assault bench trial in Yakima County  
26 District Court in Cause No. 3404 YCS, State of Washington v. Gary Lynn DeVall;  
27 Respondent imposed an order against two witnesses in the case, Rick Collins and  
28 Linda Collins (fka DeVall), to abstain from drinking and from being under the  
29 influence of alcohol in the presence of a minor, Adam DeVall. Respondent  
30 specifically denies that he lacked jurisdictional authority to impose such an order,  
31 and by way of explanation alleges that both said witnesses were personally present  
32 in court at the time such orders were imposed upon them and had knowledge  
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36 ANSWER TO STATEMENT OF  
CHARGES - 2

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1 thereof. As an affirmative defense to the allegations set forth in paragraph II.i of the  
2 Statement of Charges, Respondent alleges that such conduct as therein alleged  
3 was done in good faith, based upon a fair consideration of the applicable law, and  
4 that such conduct is subject to a qualified good faith immunity.<sup>1</sup>  
5

6 II.ii Respondent admits that on or about November 16, 1995, he  
7 received an unsolicited and unexpected telephone call from one Gary DuVall with  
8 reference to the matter of State of Washington v. Gary Lynn DuVall, Cause No.  
9 3404 YCS as alleged in paragraph II.ii of the Statement of Charges. Respondent  
10 denies each and every other allegation contained in paragraph II.ii of the Statement  
11 of Charges and all implications and inferences to be drawn therefrom, and by way  
12 of explanation alleges that Respondent reported the alleged contact to the Yakima  
13 County Sheriff's Office, who in turn investigated and provided a written report of their  
14 findings to the Respondent; Respondent, upon receipt of such report, forwarded  
15 such report to the Deputy Prosecuting Attorney assigned to this case; the Deputy  
16 Prosecuting Attorney thereupon noted the matter for hearing before Respondent;  
17 Respondent specifically denies that the communication alleged constitutes *ex parte*  
18 *contact*, and further alleges that such conduct as is herein specifically admitted was  
19 done in good faith, based upon a fair consideration of the applicable law, and by way  
20 of affirmative defense alleges that such conduct is subject to a qualified good faith  
21 immunity.  
22  
23

24 II.iii Respondent admits that on December 8, 1995, he held Rick  
25 Collins and Linda DeVall in contempt of court for violation of the order entered on  
26 November 15 1995 in the Yakima County District Court case of State of  
27

28  
29 <sup>1</sup> Wherever the affirmative defense of qualified good faith immunity is set  
30 forth herein, Respondent is asserting that: (1) he acted in good faith within  
31 the context and status of the law at the relevant time; and, (2) the  
32 Commission lacks subject matter jurisdiction to determine illegality where  
33 the law was then and there susceptible of differing interpretations, had not  
34 at the time become clearly established precedent, and was not so widely  
35 accepted as being the law of this state that no other interpretation was  
36 warranted.

1 Washington v. Gary Lynn DeVall, as alleged in paragraph II.iii of the Statement of  
2 Charges. Respondent denies each and every other allegation and implication set  
3 forth and all inference to be derived from the allegations set forth in said paragraph  
4 II.iii. Respondent specifically denies that such contempt was summary and further  
5 denies that the order entered against Rick Collins and Linda DeVall was illegal. By  
6 way of explanation, Respondent alleges that the hearing of December 8, 1995 was  
7 in the nature of a remedial contempt, conducted in good faith, and based upon a  
8 fair consideration of the applicable law, including RCW 7.21.030, and was in fact  
9 remedial contempt. Respondent is without information sufficient to form a belief as  
10 to the truth or falsity of the allegation that Respondent denied said defendants, or  
11 either of them, counsel in connection with the contempt hearings, and therefore  
12 denies the same. Respondent further alleges, by way of affirmative defense, that  
13 such conduct, as alleged, was done in good faith, based upon a fair consideration  
14 of the applicable law and as such is subject to a qualified good faith immunity.

15  
16  
17 II.iv Respondent denies each and every allegation set forth in paragraph II.iv  
18 of the Statement of Charges, and by way of further and affirmative defense, alleges  
19 that the factual allegations contained therein fail to state a claim upon which relief  
20 can be granted, and more specifically fail to allege any violation of any Canon of  
21 Judicial Conduct. Respondent moves to strike paragraph II.iv of the Statement of  
22 Charges.

23  
24 III.i Respondent admits that John Stark Adams is, and was on March 3, 1988,  
25 his brother in law; that Respondent had the referenced case transferred to the  
26 Yakima County District Court in Toppenish, Washington; and that Respondent  
27 recalled an outstanding bench warrant issued for Mr. Adams' arrest. Except as  
28 specifically admitted, Respondent denies each and every other allegation and  
29 inference contained in paragraph III.i of the Statement of Charges, and specifically  
30 denies that any *ex parte* contact occurred between Respondent and John Stark  
31 Adams. By way of explanation, Respondent alleges that he did in fact recuse  
32 himself in this matter, however, no arrangements were made by court administration  
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1 for this matter to be heard by another judge, and as a result of there being no  
2 disputed matters to be resolved in this case, Respondent, after full disclosure of his  
3 relationship with the defendant on the record, and upon hearing no objection from  
4 any party, signed agreed dispositive orders.  
5

6 III.ii Respondent admits that Byron B. Kent, was a defendant in Yakima  
7 County District Court case number 6505736, that Bonnie Kent Walker was a former  
8 Yakima County District Court Clerk; that On April 12, 1991 said Byron Kent was  
9 charged with Negligent Driving; that on May 5, 1992, an agreed bail forfeiture of  
10 \$150.00 was entered before Judge Randall Marquis, in Yakima County District  
11 Court; and that having confirmed that said forfeiture had been fully paid, on  
12 September 30, 1992, Respondent signed an order dismissing the citation and  
13 expunging it from the record. Except as herein specifically admitted, Respondent  
14 denies each and every other allegation set forth in paragraph III.ii of the Statement  
15 of Charges.  
16

17 III.iii Respondent specifically admits that Tadd Lynn Hill was a defendant in  
18 Toppenish District Court case number 6221014, charged with driving while  
19 intoxicated; that Bonnie Kent Walker was a former Yakima County District Court  
20 Clerk; and that Respondent has known Bonnie Kent Walker for many years. Except  
21 as herein specifically admitted, Respondent denies each and every other allegation  
22 and inference contained in paragraph III.iii of the Statement of Charges.  
23 Respondent further alleges, by way of affirmative defense, that the allegations set  
24 forth in paragraph III.iii of the Statement of Charges fail to state a claim upon which  
25 relief can be granted, and more specifically fail to state a violation of any Canon of  
26 Judicial Conduct. Respondent moves to strike paragraph III.iii of the Statement of  
27 Charges.  
28

29 IV.i Respondent denies that he conducted any *ex parte* communication with  
30 Bruce Allen Smartlowit, as alleged in paragraph III.iv of the Statement of Charges  
31 and further denies that there was any failure to notify the State of Washington of any  
32 court action taken on February 19, 1998. Respondent denies each and every other  
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36 ANSWER TO STATEMENT OF  
CHARGES - 5

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1 allegation, implication and inference set forth in paragraph III.iv of the Statement of  
2 Charges. By way of affirmative defense Respondent alleges that paragraph III.iv of  
3 the Statement of Charges fails to state a claim upon which relief can be granted and  
4 more specifically fails to state any factual basis for violation of any Canon of Judicial  
5 Conduct. Respondent moves to strike paragraph III.iv of the Statement of Charges.

7 IV.ii Respondent admits that Richard Neal Lanagan was a defendant in  
8 Yakima County, Toppenish District Court Case number 5597261, charged with No  
9 Valid Operator's License and came before Respondent on January 11, 1989. By  
10 way of explanation, on January 11, 1989, upon said defendant's first appearance  
11 before Respondent, and Respondent, recognizing said defendant was suspected  
12 of theft of Respondent's property, recused himself. Except as herein specifically  
13 admitted, Respondent denies each and every other allegation and inference set  
14 forth in paragraph III.v of the Statement of Charges.

16 IV.iii Respondent admits that James Littlebull was a defendant in Yakima  
17 County District Court case number 203085 WSP; that said defendant was found by  
18 Respondent to be in violation of the terms of his sentence upon a conviction of  
19 negligent driving in the first degree; that said defendant was sentenced to one day  
20 in jail; that said defendant failed to serve his sentence as ordered; and that  
21 Respondent signed an Amended Commitment Order on May 12, 1999. Except as  
22 specifically admitted, Respondent lacks information sufficient to form a belief as to  
23 the truth or falsity of the remaining allegations set forth in paragraph III.vi of the  
24 Statement of Charges and therefore denies the same. By way of further  
25 explanation, Respondent alleges that amended commitment orders are routinely  
26 signed by judges, without necessity of hearing or notice to the prosecuting attorney  
27 where the effect of such amended commitment orders is merely to change the time  
28 for serving a sentence without otherwise altering the punishment imposed and that  
29 such routine is a standard and customary practice among the judges of the Yakima  
30 County District Court, joined in by the Yakima County Prosecutor's Office who have  
31 no interest in such administrative details; moreover, such orders are frequently  
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36 ANSWER TO STATEMENT OF  
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1 required by jail census and overcrowding. Respondent further alleges, by way of  
2 affirmative defense, that such orders were signed in good faith, based upon a fair  
3 consideration of the local practices of the court and a fair consideration of applicable  
4 law, as such is subject to a qualified good faith immunity.  
5

6 IV.iv Respondent denies each and every allegation and inference set forth  
7 in paragraph III.vii of the Statement of Charges with the exception that said  
8 defendant, Caroline Looney, was a defendant in Yakima County District Court case  
9 numbers 81027, 95943, 11977 and 11976. By way of affirmative defense,  
10 Respondent alleges that the allegations of paragraph III.vii of the Statement of  
11 Charges fails to state a claim upon which relief can be granted and more specifically  
12 fails to state a factual basis for any violation of any Canon of Judicial Conduct.  
13 Respondent moves to strike paragraph IV.iv of the Statement of Charges.  
14 Respondent further alleges, by way of affirmative defense, that such orders were  
15 signed in good faith, based upon a fair consideration of the local practices of the  
16 court and a fair consideration of applicable law, and as such is subject to a qualified  
17 good faith immunity.  
18

19 IV.v Respondent admits that Robert Wayne Bjur was a defendant in Yakima  
20 County District Court case number 237366. Except as specifically admitted herein,  
21 Respondent denies each and every other allegation and inference to be drawn  
22 therefrom as set forth in paragraph IV.v of the Statement of Charges. By way of  
23 explanation and affirmative defense, Respondent alleges that modifications or  
24 changes to the Order of Commitment in the aforesaid case were corrections of  
25 clerical errors, in no way altering or affecting the imposition of sentence; that upon  
26 subsequent hearing, the State of Washington, by and through the Yakima County  
27 Prosecuting Attorney withdrew all objections to the orders entered; that Respondent  
28 in announcing his sentence, initially and consistently indicated on the record his  
29 intention that said defendant could serve the imposed jail time in any jail within the  
30 State of Washington; that , due to the unusual circumstance that Defendant Bjur  
31 was a Prosecuting Attorney who faced personal risks of being placed in a local jail,  
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36 ANSWER TO STATEMENT OF  
CHARGES - 7

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1 this degree of flexibility was required by the ends of justice; that the allegations set  
2 forth in paragraph IV.v of the Statement of Charges fail to state a claim upon relief  
3 can be granted and more specifically fail to set forth any factual basis constituting  
4 a violation of any Canon of Judicial Conduct. Respondent moves to dismiss  
5 paragraph IV.v of the Statement of Charges for failure to state a claim upon which  
6 relief can be granted, or in the alternative moves to strike said paragraph.  
7 Respondent further alleges, by way of affirmative defense, that such orders as are  
8 herein alleged were entered in good faith, based upon RCW 70.48.220 and local  
9 practices of the court, and further based upon a fair consideration of applicable law,  
10 and as such are subject to a qualified good faith immunity.

11  
12  
13 IV.vi Respondent admits that Aldwin Looney was a defendant in Yakima  
14 County District Court case number 8969 YCS and 8970 YCS. Except as specifically  
15 admitted here, Respondent denies each and every other allegation and inference  
16 set forth in paragraph IV.vi of the Statement of Charges.

17  
18 IV.vii Respondent denies each and every allegation and inference set forth  
19 in paragraph IV.vii of the Statement of Charges. By way of affirmative defense,  
20 Respondent alleges that the allegations set forth in paragraph IV.vii of the Statement  
21 of Charges fail to state a claim upon which relief can be granted and more  
22 specifically fail to state a factual basis for violation of any Canon of Judicial Conduct.  
23 Respondent moves to strike paragraph IV.vii of the Statement of Charges.

24  
25 IV.viii Respondent admits that Robert Arquette was a defendant in Yakima  
26 County District Court cause 6400389. Except as specifically admitted herein,  
27 Respondent denies each and every other allegation and inference set forth in  
28 paragraph IV.viii of the Statement of Charges. By way of an affirmative defense,  
29 Respondent alleges that paragraph IV.viii fails to state a claim upon which relief may  
30 be granted, and more specifically fails to allege conduct constituting a violation of  
31 any Canon of Judicial Conduct; fails to establish subject matter jurisdiction; is vague  
32 and ambiguous. Respondent moves to dismiss Paragraph IV.viii for failure to state  
33 a claim upon which relief can be granted, or, in the alternative moves for an order  
34

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36 ANSWER TO STATEMENT OF  
CHARGES - 8

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1 requiring a more definite statement of facts alleged in support of the claim.

2  
3 V.i Respondent admits that Adam Munson was a defendant in Yakima  
4 County District Court case number SDC 118893; that on March 17, 1996 said  
5 defendant was charged with Driving Under the Influence; and that a bench trial was  
6 conducted before Respondent on June 4, 1996. Except as herein specifically  
7 admitted, Respondent denies each and every other allegation and inference to be  
8 derived therefrom as set forth in paragraph V.i of the Statement of Charges. By way  
9 of explanation and affirmative defense, Respondent alleges that upon the conclusion  
10 of the trial, the case was taken under advisement by Respondent, and release  
11 restrictions were imposed, including the alcohol treatment program alleged. Any  
12 record of a finding of not guilty upon the conclusion of trial was the result of a clerical  
13 error.  
14

15 V.ii Respondent admits that Apolinar Villegas was a defendant in Yakima  
16 County District Court, Sunnyside District Court case number 85574, charged with  
17 4th Degree Assault; that said defendant pled guilty to the charge on January 21,  
18 1992. Except as herein specifically admitted, Respondent denies each and every  
19 other allegation and inference set forth in paragraph V.ii of the Statement of  
20 Charges. By way of explanation and as an affirmative defense, Respondent alleges  
21 that upon the tender of a guilty plea, the Respondent intended in good faith to  
22 continue this matter for a period of six (6) months upon condition of good behavior,  
23 and directed said defendant and his wife to attend church. Such direction was not  
24 intended to be an order of the court and to the extent it may appear from the record  
25 to be so, was inadvertent and unintended.  
26  
27

28 V.iii Respondent admits that Jenna Lee Webber was a defendant In Yakima  
29 County District Court case number 13654. Except as specifically herein admitted,  
30 Respondent denies each and every other allegation and inference set forth in  
31 paragraph V.iii of the Statement of Charges. By way of explanation and affirmative  
32 defense, Respondent alleges that any conditions imposed by the court upon  
33 dismissal were the result of a negotiated resolution of the criminal charges proposed  
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CHARGES - 9

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1 and/or agreed upon by counsel for the State and the defendant and therefore  
2 adopted by the Court. Respondent alleges, by way of affirmative defense that such  
3 action on the part of the Respondent was taken upon agreement of counsel for the  
4 parties, done in good faith after a fair consideration of applicable, and as such is  
5 subject to a qualified good faith immunity.  
6

7 V.iv Respondent admits specifically that Jesse Rodarte was a defendant in  
8 Yakima County District Court case number 92071 and was sentenced by  
9 Respondent. Except as herein specifically admitted, Respondent denies each and  
10 every other allegation and inference set forth in paragraph V.iv of the Statement of  
11 Charges. Respondent further alleges that the imposition of sentence was done in  
12 good faith, after a fair consideration and interpretation of the applicable law, and as  
13 such is subject to a qualified good faith immunity.  
14

15 V.v Respondent admits specifically that Oscar Abundez was a defendant in  
16 Yakima County District Court case number 92071 and was sentenced upon  
17 conviction for DUI. Except as specifically admitted herein, Respondent denies each  
18 and every other allegation and inference alleged in paragraph V.v of the Statement  
19 of Charges. By way of explanation, and as an affirmative defense, Respondent  
20 alleges that the sentence imposed was rendered based upon Respondent's good  
21 faith construction of the available range of sentences which could be lawfully  
22 imposed and Respondent's decision in that regard is protected by a qualified good  
23 faith immunity.  
24

25 V.vi Respondent admits that Eberardo Garcia was a defendant in Yakima  
26 County District court case number 8958 YCS; that said defendant was sentenced  
27 upon conviction of DUI/DWLS 2nd after revocation of deferred prosecution. Except  
28 as specifically admitted herein, Respondent denies each and every other allegation  
29 and inference set forth in paragraph V.vi of the Statement of Charges. By way of  
30 explanation and as a further affirmative defense, Respondent alleges that such  
31 disposition was based upon the joint recommendation of the Deputy Prosecuting  
32 Attorney representing the State of Washington and defense counsel; that such  
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36 ANSWER TO STATEMENT OF  
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1 decision was within the court's discretion and mandated by the applicable  
2 jurisdictional limitations and as such subject to a qualified good faith immunity.  
3 Respondent moves that paragraph V.vi be stricken.  
4

5 V.vii Respondent admits specifically that Arlon Leon Rabe was a defendant  
6 in Yakima County District Court case number 170645; that said defendant was  
7 sentenced upon conviction of DUI after revoking his deferred prosecution; and that  
8 no probation was imposed. Except as herein specifically admitted, Respondent  
9 denies each and every other allegation and inference set forth in paragraph V.vii.  
10 By way of further explanation and affirmative defense, Respondent alleges that at  
11 the time of revocation of the deferred prosecution and sentencing, the District Court  
12 for Yakima County had no further jurisdiction to order probation. Respondent further  
13 alleges that the Court's decision in that regard was based upon Respondent's good  
14 faith understanding of the applicable laws, is subject to a qualified good faith  
15 immunity, and was recommended to the Court by the Deputy Prosecuting Attorney  
16 representing the State of Washington. Respondent moves to strike paragraph V.vii  
17 of the Statement of Charges.  
18  
19

20 V.viii Respondent admits that Elena Trujillo was a defendant in Yakima  
21 County District Court, Toppenish District Court case number 95-81036 WSP; that  
22 Respondent recused himself from the case in March 1996. Except as herein  
23 specifically admitted, the Respondent lacks information sufficient to form a belief as  
24 to the truth or falsity of the remaining allegations set forth in paragraph V.viii of the  
25 Statement of Charges and therefore denies the same. By way of explanation and  
26 further affirmative defense, Respondent alleges that said defendant, after March,  
27 1996, withdrew her objection to Respondent hearing further matters in her case,  
28 after which any subsequent orders entered by Respondent were entered upon  
29 agreement of the parties. Respondent further alleges that his continued  
30 involvement, after recusal, based upon said defendant's withdrawal of her objection  
31 to Respondent acting upon her case, was subject to a qualified good faith immunity.  
32  
33

34 VI.i Respondent admits that Guy L. Gregg was a defendant in Yakima County  
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1 District Court case number 7817420; and that Respondent imposed two days of jail  
2 time for contempt of court for failure to follow an Order of Deferred Prosecution.  
3 Except as herein specifically admitted, Respondent denies each and every other  
4 allegation and inference set forth in paragraph VI.i of the Statement of Charges. By  
5 way of further explanation and affirmative defense, Respondent alleges that the jail  
6 time was imposed on the referenced defendant, during the pendency of deferred  
7 prosecution, for contempt of court for failure to comply with the Court ordered  
8 deferred prosecution. Respondent moves to strike paragraph VI.i of the Statement  
9 of Charges.  
10

11  
12 VI.ii Respondent admits specifically that Shane Harmon was a defendant in  
13 Yakima District Court case number 7715946; was placed on deferred prosecution;  
14 and the order of deferred prosecution was amended on two occasions. Except as  
15 herein specifically admitted, defendant denies each and every other allegation and  
16 inference set forth in paragraph VI.ii of the Statement of Charges. Respondent  
17 further alleges, by way of affirmative defense, that such actions as are herein  
18 admitted were done in good faith, based upon a fair and reasonable interpretation  
19 of the law applicable and as such is subject to a qualified good faith immunity.  
20

21 VI.iii Respondent admits that Terry L. Laws was a defendant in Yakima  
22 County District Court case number 6781052 and Respondent imposed jail time  
23 during the pendency of the deferred prosecution. Except as herein specifically  
24 admitted, Respondent denies each and every other allegation and inference set  
25 forth in paragraph VI.iii of the Statement of Charges. By way of explanation and as  
26 an affirmative defense, Respondent alleges that jail time was imposed upon such  
27 defendant, during the pendency of the deferred prosecution for contempt for failure  
28 to comply with the court ordered deferred prosecution. Respondent further alleges,  
29 by way of affirmative defense, that the conduct admitted here was done in good  
30 faith, after a fair and reasonable consideration of the applicable law, and is subject  
31 to a qualified good faith immunity. Respondent moves to strike paragraph VI.iii of  
32 the Statement of Charges.  
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36 ANSWER TO STATEMENT OF  
CHARGES - 12

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1 VI.iv Respondent specifically admits that Jimmie O. Taylor was a defendant  
2 in Yakima County District Court case number 59909, and placed on deferred  
3 prosecution. Except as herein specifically admitted, Respondent denies each and  
4 every other allegation and inference set forth in paragraph VI.iv of the Statement of  
5 Charges. Respondent further alleges that paragraph VI.iv fails to state a claim upon  
6 which relief can be granted, and more specifically fails to allege facts constituting a  
7 violation of any Canon of Judicial Conduct. Respondent moves to strike paragraph  
8 VI.iv.  
9

10 VI.v Respondent admits specifically that Francisco Munoz was a defendant  
11 in Yakima County District Court case number 96-118325; that said defendant was  
12 placed on deferred prosecution for DUI and DWLS 1st; and Respondent learned,  
13 during the pendency of the deferred prosecution that said defendant had been  
14 charged with the charge of DWLS 3rd during the pendency of the deferred  
15 prosecution. Except as herein specifically admitted, Respondent denies each and  
16 every other allegation and inference set forth in paragraph VI.v of the Statement of  
17 Charges. Respondent further alleges, as explanation and affirmative defense, that  
18 the disposition of this matter, upon discovery of the subsequent DWLS 3rd charge,  
19 was jointly recommended by the Deputy Prosecuting Attorney and the attorney for  
20 the defendant. Paragraph VI.v fails to state a claim upon which relief can be  
21 granted, and more specifically fails to state a factual basis for violation of any Canon  
22 of Judicial Conduct.  
23

24 VI. Vi Respondent admits specifically that Linda Minthorn was a defendant  
25 in Toppenish District Court case numbers 6112398, 6568242, 4213 and 202456;  
26 that Respondent entered an order deferring prosecution in case number 6112398,  
27 on January 10, 1996; that on February 11, 1998, upon motion of the state, case  
28 number 4213 was dismissed; that on May 20, 1998, Respondent accepted a guilty  
29 plea on case number 202456, and sentenced said defendant. Except as herein  
30 specifically admitted, Respondent denies each and every other allegation and  
31 inference set forth in paragraph VI.vi of the Statement of Charges. By way of further  
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36 ANSWER TO STATEMENT OF  
CHARGES - 13

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1 explanation, Respondent alleges that the decisions made by Respondent with  
2 regard to these pending matters were within his judicial discretion under then  
3 applicable law, or a good faith reasonable interpretation thereof, and Respondent's  
4 actions are subject to a qualified good faith immunity.  
5

6 VI.vii Respondent admits specifically that Juan Cabrera was a defendant  
7 in Sunnyside District Court case numbers 170532 and 170533; that said defendant  
8 had previously been placed on a deferred prosecution in Grandview Municipal  
9 Court; that it now appears that said defendant was ineligible for the deferred  
10 prosecution granted by Respondent. Except as herein specifically admitted,  
11 Respondent denies each and every allegation and inference set forth in paragraph  
12 VI.vii of the Statement of Charges.  
13

14 VI.viii Respondent admits specifically that Sinforozo Villarreal was a  
15 defendant in Sunnyside District Court case number 92132; that Respondent granted  
16 said defendant's application to withdraw a plea of guilty. Except as herein  
17 specifically admitted, Respondent denies each and every other allegation set forth  
18 in paragraph VI.viii of the Statement of Charges. Respondent further alleges, by  
19 way of affirmative defense, that paragraph VI.viii of the Statement of charges fails  
20 to set forth factual allegations upon which relief can be granted, and more  
21 specifically fails to allege facts constituting a violation of any Canon of Judicial  
22 Conduct. Respondent moves that paragraph VI.viii be stricken.  
23

24 VII.i Respondent specifically admits that on Saturday, November 21, 1998,  
25 Respondent brought champagne onto the premises of the Yakima County  
26 Courthouse; and that while there, Respondent consumed a portion thereof. Except  
27 as herein specifically admitted, Respondent denies each and every other allegation  
28 and inference set forth in paragraph VII.i of the Statement of Charges. By way of  
29 explanation, Respondent further alleges that the district court operations on the  
30 premises referred to occurred on a Saturday, while the court house premises was  
31 closed to the public; that no judicial activities were then taking place; that all persons  
32 present were volunteers aiding in the closing and moving of Yakima District Court  
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36 ANSWER TO STATEMENT OF  
CHARGES - 14

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1 records and files; that no one present was "encouraged" to consume champagne;  
2 that no one present at such time and place was "on duty;" and that the Yakima  
3 County Alcohol and Drug Abuse Policy Regulation NO. 27-J is inapplicable to the  
4 Respondent by reason of the separation of powers doctrine derived from Article 4,  
5 Section 1 of the Washington State Constitution. Respondent further alleges, by way  
6 of affirmative defense, that the allegations set forth in paragraph VII.i of the  
7 Statement of Charges fail to state a claim upon which relief can be granted, and  
8 more specifically fail to allege facts constituting a violation of any Canon of Judicial  
9 Conduct. Respondent moves to strike the allegations set forth in paragraph VII.i of  
10 the Statement of Charges.  
11

12  
13 VII.ii Respondent lacks information sufficient to form a belief as to the truth  
14 or falsity of the allegation that on the dates specified in paragraph VII.ii of the  
15 Statement of Charges, that he was on the Yakima County Courthouse premises  
16 after having consumed alcoholic beverages; that other judges, attorneys and court  
17 personnel have noted a detectable odor of alcoholic beverages about the  
18 Respondent's person; that some of these witnesses gained the impression Judge  
19 Colby's work performance was affected by his alcohol consumption; that all  
20 witnesses felt that it was inappropriate for the Respondent to have the odor of  
21 alcoholic beverages about his person at the workplace; that the impressions  
22 created by Respondent detrimentally affected the integrity of the judiciary and  
23 undermined public confidence in the administration of justice, and therefore denies  
24 each and every such allegation and inference to be drawn therefrom, as set forth in  
25 paragraph VII.ii of the Statement of Charges. Respondent further alleges, by way  
26 of affirmative defense, that the Yakima County Alcohol and Drug Abuse Policy  
27 Regulation No 27-J is inapplicable to Respondent by reason of the doctrine of  
28 separation of powers as derived from Article 4, Section 1 of the Washington State  
29 Constitution; that the allegations set forth in paragraph VII.ii fails to state a claim  
30 upon which relief can be granted, and more specifically that such facts fails to state  
31 a factual basis for violation of any Canon of Judicial Conduct; that such allegations  
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36 ANSWER TO STATEMENT OF  
CHARGES - 15

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1 as are set forth in the subject paragraph are so vague, subjective, and ambiguous  
2 that Respondent can not reasonably be required to frame a responsive pleading to  
3 them; that the allegations set forth in paragraph VII.ii are insufficient to support any  
4 claim of violation of the Canons of Judicial Conduct, and are immaterial, scandalous,  
5 defamatory and impertinent. Respondent therefore moves to dismiss the allegations  
6 set forth in paragraph VII.ii for failure to state a claim; and, in the alternative to strike  
7 such allegations as scandalous, immaterial, impertinent, or in the alternative, to  
8 require that the allegations set forth in paragraph VII.ii be made more definite and  
9 certain, in order to permit Respondent to reasonably frame a responsive pleading.  
10

11  
12 VII.iii Respondent admits the allegations set forth in paragraph VII.iii of the  
13 Statement of Charges. By way of explanation and affirmative defense, Respondent  
14 alleges that he followed to the letter the legal advice given him by Nanette Sullins  
15 of the Washington State Ethics Advisory Commission and promptly reimbursed  
16 Yakima County, from his own personal funds, for all materials and secretarial time  
17 used in the pursuit alleged in paragraph VII.iii. Respondent therefore alleges that  
18 the allegations set forth in paragraph VII.iii are moot, resolved, and settled and that  
19 such allegations be stricken. Respondent further moves that such allegations be  
20 dismissed for failure to state a claim upon which relief can be granted, and more  
21 specifically that such allegations fail to set forth any factual basis for violation of any  
22 Canon of Judicial Conduct.  
23

24 IX.i Respondent denies each and every allegation set forth in paragraph IX.i  
25 of the Statement of Charges, except that Respondent specifically admits that he  
26 acquiesced in the rotation system imposed by the presiding judge. Respondent  
27 further alleges, by way of affirmative defense, that the allegations set forth in  
28 paragraph IX.i of the Statement of Charges fail to state a claim upon which relief can  
29 be granted, and more specifically fail to constitute allegations of fact sufficient to  
30 support a violation of any Canon of Judicial Conduct; and are so vague and  
31 ambiguous that Respondent cannot reasonably be required to frame a responsive  
32 pleading. Respondent therefore moves to dismiss the allegations set forth in  
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36 ANSWER TO STATEMENT OF  
CHARGES - 16

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1 paragraph IX.i of the Statement of Charges, moves to strike such allegations, or in  
2 the alternative, moves for a more definite statement of the allegations therein set  
3 forth.  
4

5 IX.ii Respondent denies each and every allegation and inference to be drawn  
6 from the allegations set forth in paragraph IX.ii of the Statement of Charges. By way  
7 of explanation, Respondent alleges that the alleged stamp was not applied to any  
8 cases not assigned to Respondent, and upon which he had made discretionary  
9 rulings. By way of affirmative defense, Respondent alleges that the Commission on  
10 Judicial Conduct lacks subject matter jurisdiction with regard to the allegations set  
11 forth in paragraph IX.ii of the Statement of Charges and moves to dismiss the  
12 allegations set forth in paragraph IX.ii of the Statement of Charges.  
13

14 IX.iii Respondent denies each and every allegation and inference to be drawn  
15 from the allegations set forth in paragraph IX.iii of the Statement of Charges.  
16 Respondent further alleges that the Commission on Judicial Conduct lacks subject  
17 matter jurisdiction with regard to the allegations set forth in paragraph IX.iii of the  
18 Statement of Charges and moves to dismiss all such allegations.  
19

20 IX.iv Respondent denies each and every allegation and all inferences to be  
21 drawn from the allegations set forth in paragraph IX.iv of the Statement of Charges.  
22 By way of Affirmative Defense, Respondent alleges that any such conduct as is  
23 alleged is required pursuant to Respondent's oath and duties as a District Court  
24 Judge to uphold the Constitution and the Laws of the State of Washington.  
25 Respondent further alleges that the allegations set forth in paragraph IX.iv of the  
26 Statement of Charges fails to state a claim upon which relief can be granted, or  
27 more specifically fails to allege facts constituting a violation of any Canon of Judicial  
28 Conduct and moves to dismiss the same.  
29

30 **C. Answer to Allegations of Basis for Commission Action**

31 Responding to Subpart C. Basis for Commission Action, Respondent  
32 acknowledges that on April 7, 2000 the Commission determined that probable cause  
33 exists to believe that Respondent has violated the cited Cannons. Respondent  
34

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36 ANSWER TO STATEMENT OF  
CHARGES - 17

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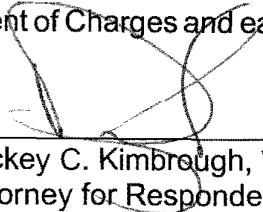
denies that the portions reproduced in said Subpart C. 1. designated "Comment" are a part of the Canons cited and moves to strike all reference thereto in the pleadings. Moreover, Respondent denies that any of the alleged conduct set forth in the Statement of Charges constitutes a factual basis for violation of any of the cited Canons of Judicial Conduct.

**D. Answer to Procedure for Respondent to Answer Statement of Charges**

Part D of the Statement of Charges, captioned "Procedure for Respondent to Answer Statement of Charges" is procedural in nature and requires neither an admission or denial.

WHEREFORE, having fully answered the Statement of Charges, Respondent respectfully requests that the Statement of Charges and each of them be dismissed.

Dated: May 26, 2000.

  
\_\_\_\_\_  
Rickey C. Kimbrough, WSBA No. 5230,  
Attorney for Respondent