

Superior Court of the State of Washington
for Snohomish County

JUDGES

GERALD L. KNIGHT
RICHARD J. THORPE
LARRY E. MC KEEMAN
RONALD L. CASTLEBERRY
THOMAS J. WYNNE
ANITA L. FARRIS
LINDA C. KRESE
GEORGE N. BOWDEN
ELLEN J. FAIR
KENNETH L. COWSBERT
MICHAEL T. DOWNES
ERIC Z. LUCAS
DAVID A. KURTZ
BRUCE I. WEISS
GEORGE F.B. APPEL
JOSEPH P. WILSON

SNOHOMISH COUNTY COURTHOUSE

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Everett, WA 98201-4060
(425) 388-3421 (425) 388-3536

PRESIDING JUDGE
ELLEN J. FAIR

COURT COMMISSIONERS
ARDEN J. BEDLE
LESTER H. STEWART
JACALYN D. BRUDVIK
TRACY G. WAGGONER
SUSAN C. GAER

COURT ADMINISTRATOR
SUPERIOR AND JUVENILE COURT
BOB TERWILLIGER

May 12, 2010

The Honorable Charles Johnson
Washington State Supreme Court
P.O. Box 40929
Olympia, Washington 98504

Re: Proposed Amendments to Code of Judicial Responsibility

Dear Justice Johnson:

We are writing to provide input regarding the proposal to require mandatory reporting of code violations for judges, Rule 2.15 (A) and (B) of the proposed new Code of Judicial Conduct. We are concerned that the proposal may easily trigger the law of unintended effect and likely will cause more problems than it intends to resolve. For example, there may be a number of people who will be reluctant to receive information about other judges or lawyers so that they will not be in a position to have to report a person they know or work with. Others may be reluctant to provide information knowing that the person to whom they give it is a mandatory reporter.

The result may be people sticking their heads in the sand so that they don't know things and thus have no reporting obligation. We believe there will be a more free flow of information if a person with concerns about a judge or lawyer can approach another judge with those concerns if that person believed that the judge to whom they were giving the information had some discretion about how to handle it, and that problems will be dealt with as a result, including that the problems may be reported to the appropriate authority.

Part of the trouble is that the proposal is so broadly written. Probably no reasonable person would argue against mandatory reporting if you had knowledge of certain acts. Bribery and crimes against children come to mind, but there are undoubtedly more. But what does "trustworthiness, or fitness as a judge in other respects" mean? Does a judge who consumes alcohol become unfit? One glass of wine? Four glasses of wine? Four glasses over a month? A judge who gambles? At a legal casino? In a friendly game of poker among friends? Whose standard of "fitness" is applied to the reporting requirement? A person who believes that no one should ever consume alcohol or gamble?

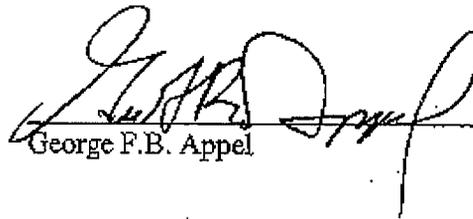
There is also a concern with how knowledge is defined. Must the judge have actual knowledge? The definition of knowledge seems to suggest not. When do you have enough information to "know"? Does the default position become to report in order to avoid trouble for not reporting? Are you an unfit judge for not reporting because you believe you don't have enough information to trigger the requirement but then the person who gave you the information reports you for not reporting? Where does it all end?

We are opposed to the proposed mandatory reporting requirement in its current form. Thank you for taking our position into account when considering adoption of the rule.

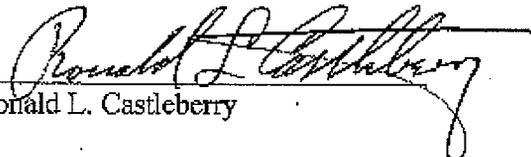
Sincerely,



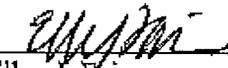
Michael T. Downes



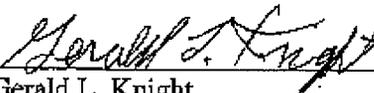
George F.B. Appel



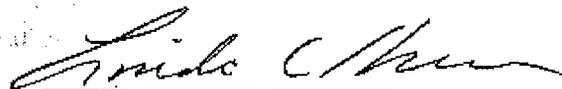
Ronald L. Castleberry



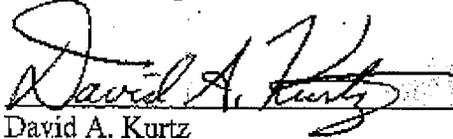
Ellen J. Fair



Gerald L. Knight



Linda C. Krese



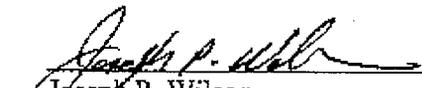
David A. Kurtz



Eric Z. Lucas



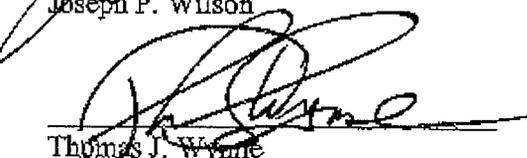
Bruce I. Weiss



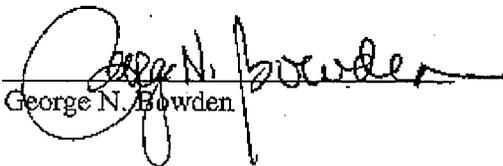
Joseph P. Wilson



Kenneth L. Cowsert



Thomas J. Wynne



George N. Bowden



Larry E. McKeeman