

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Brian P. Carr
Plaintiff

versus

Sam Reed, in his official capacity as Secretary of State of the State of Washington, Wanda Briggs in her official capacity as Chair of the State of Washington Commission of Judicial Conduct, and Rob McKenna, in his official capacity as Attorney General of the State of Washington and representing in their official capacity as representatives of the State of Washington and, separately, as private individuals the Honorable Robert L. Harris, John F. Nichols, Barbara D. Johnson, Kenneth Eiesland, Rich Melnick, John Hagensen, Kelli E. Osler, Joel Penoyar, (J.) C. C. Bridgewater, J. Robin Hunt, Gerry L. Alexander, Barbara Madsen, Mary E. Fairhurst, Susan Owens and James M. Johnson as well as other currently unnamed parties as determined by the Court
Defendants

Civil No. 3:07-cv-05260-RJB

Declaration of
Brian P. Carr,
October 15, 2007

I, Brian P. Carr, am the Plaintiff in this matter, have knowledge of the facts of this matter, and make the following statements under oath and penalty of perjury.

1. On July 9, 2006, I sent a letter to the Washington State Commission of Judicial Conduct a copy of which is attached as Exhibit A on page 4.
2. On August 12, 2006, I sent a letter to the Washington State Commission of Judicial Conduct a copy of which is attached as Exhibit B on page 7.

3. On October 16, 2006, I sent a letter to the Washington State Commission of Judicial Conduct a copy of which is attached as [Exhibit C](#) as a separate document. Attached to that letter were copies of the Orders appointing individuals as Clark County Superior Court Commissioners in 2004 and 2005 which have already been submitted to the court as [document 36](#) (pages 8-36), [36-3](#) and [36-4](#).
4. On May 29, 2007, I sent an e-mail to the Washington State Commission of Judicial Conduct a copy which is attached as Exhibit D on page 9. Attached to this e-mail was a copy of the [Complaint](#) in this matter dated May 23, 2007. This e-mail was sent in anticipation of the meeting of the Washington State Commission of Judicial Conduct on June 8, 2007 where the case I initiated, #5079, was to be considered. It was intended to keep the Commission informed of the status of the matter and to expand the list of individuals against which allegations of violations of their oath of office were raised.
5. In June of 2007, I received two letters from Mr. Kurt Twitty of the Washington State Commission of Judicial Conduct. [Exhibit E](#) is a copy of the letter dated June 14, 2007 on page 11 and as a separate document. [Exhibit F](#) is a copy of the letter dated June 25, 2007 on page 13 as a separate document.
6. Attached as Exhibit G is a copy of the Petition for Review submitted on June 2, 2006 to the Washington Supreme Court. It has been altered so that all references to my former wife are changed to Karyn and all other identifying information for her has been removed. It is attached as a separate document.
7. In early 2007 I visited the Clark County court on several days and observed the processing of [RCW 26.50](#) (domestic violence) as well as reviewing the records of completed requests. Defendant Osler reviewed almost all of the initial petitions and granted or denied temporary Orders for Protection without conducting any ex parte hearings. It was reported by the clerks that she reviewed the petitions during her lunch time. Defendant Hagensen conducted almost all of the hearings and granted or denied the full Orders for Protection.

Dated October 15, 2007 at Vancouver, Clark County, WA.

s/ Brian P Carr

Signature of Plaintiff

Brian Carr

11301 NE 7th St., Apt J5

Vancouver, WA 98684

503-545-8357

CERTIFICATION

I hereby certify that on October 15, 2007, a true and accurate copy of the foregoing Plaintiff's Declaration was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system as all parties have elected electronic filing as indicated on the Notice of electronic Filing. Parties access this filing through the court's CM/ECF System.

s/ Brian P Carr

Signature of Plaintiff

Brian Carr

11301 NE 7th St., Apt J5

Vancouver, WA 98684

503-545-8357

Exhibit A

Letter to the Washington State
Commission of Judicial Conduct
July 9, 2006

Brian Carr
11301 NE 7th St, Apt J5
Vancouver, WA 98684
brian@brian.carr.name

J Reiko Callner
Commission on Judicial Conduct
PO Box 1817
Olympia, WA 98507

Dear Mr. Callner:

July 9, 2006

Thank you for your response of June 30, 2006. I understand that your commission is restricted to matters related to ethical violations by Washington State judges. The Code of Judicial Conduct requires that 'Judges should respect and comply with the law', Canon 2 (A) as well as 'be faithful to the law' Canon 3 (A) (1). As such I would like to request that your Commission initiate a screening investigation of Clark County Superior Court Judges Johnson, Nichols, and Harris as well as other judges who may have knowingly violated the requirements of Washington State Constitution. Further, 'Judges should accord to every person ... full right to be heard according to law' Canon 3 (A) (4)'. I would like to request that your Commission initiate a screening investigation of Court of Appeals Judges Penoyar, Bridgewater, and Hunt who appear to have intentionally avoided addressing the issues related to this violation of Washington State Constitution.

In an effort to simplify and speed processing of Domestic Violence cases in Clark County (an admirable goal), the Clark County Superior Court appointed all the District Court judges as Superior Court Commissioners to avoid the restrictions of [RCW 26.50.020](#) (5). That would be fine except that [Washington State Constitution, Article IV, Section 23](#) limits the appointment of such Commissioners in any given county to 'not exceeding three in number' and Clark County Superior Court appointed nine. The numeric limits on the number of Commissioners is hardly a fundamental civil right in and of itself. Indeed, had the voters chosen to eliminate that limit when the issue was raised in 1981, this would have been within the discretion of the court. However, knowingly violating the requirements of the constitution created a need for secrecy and restrictions on appeal which aggravated their violations of the law.

The Court of Appeals was made aware of these appointments in Case 32671-0-II with a question of:

Can the Superior Court in any given county make more than three valid simultaneous appointments of Commissioners who aren't Family Court Commissioners? The trial court answered in the affirmative.

and the record included copies of Orders appointing four Commissioners who weren't Family Court / Law Commissioners. The response of the Court of Appeals was:

Carr argues that his due process rights and his right to have a judge adjudicate his case were violated because Clark County allegedly appointed more than three court commissioners. However, a family law commissioner is not a "commissioner" within the meaning of the constitutional provision limiting the number of court commissioners in counties.

The Court of Appeals simply ignored the question before it and answered a well understood question which was not relevant to the case at hand. While the correction of improperly appointed Commissioners is likely to be highly disruptive, it undermines our government of law when such violations are just ignored.

Our government of law is dependent on the courts following the law and I ask that you initiate an investigation into the behavior of the listed judges to determine if there has been the violations of the Code of Judicial Conduct as alleged. Your attention to this matter is appreciated.

Sincerely,

/s/ Brian Carr

Brian Carr

Exhibit B

Letter to the Washington State
Commission of Judicial Conduct
August 12, 2006

Brian Carr
11301 NE 7th St, Apt J5
Vancouver, WA 98684
brian@brian.carr.name

J Reiko Callner
Commission on Judicial Conduct
PO Box 1817
Olympia, WA 98507

Dear Mr. Callner:

August 12, 2006

Thank you for your letter of August 7, 2006 and the attention the Commission has paid to this matter. I would like to ask for additional information concerning the conclusions of the Commission and ask that they reconsider the matter.

In particular I would like to know if the problem was that they could not substantiate that Clark County Superior Court Judges Johnson, Nichols, and Harris violated the Washington State Constitution by appointing four Superior Court Commissioners in 2004 and 2005. Washington State Constitution, Article IV, Section 23 limits the appointment of such Commissioners in any given county to 'not exceeding three in number'. It appears that the Clark County Superior Court is no longer violating that numeric limit, but I can provide copies of Orders for 2004 and 2005 which demonstrate that they violated it in 2004 and 2005.

If the problem was a determination that such violations of the explicit limits of the constitution are violations of the Code of Judicial Conduct, I would be happy to supply the legal basis for such a determination.

Your attention to this matter is appreciated.

Sincerely,

/s/ Brian Carr
Brian Carr

Exhibit D

E-Mail to Washington State
Commission of Judicial Conduct

May 29, 2007

Case #5079

Subject: Expnded Allegations for #5079

From: Brian Carr <carrbp@gmail.com>

Date: Tue, 29 May 2007 22:00:39 -0700

To: ktwitty@cj.state.wa.us

Attached is a copy of the Complaint in Western Washington Federal District Court Case 3:07-cv-5260 RJB (Judge Robert J Bryan). It expands on the number of judges who are accused of violating their oath of office. If you would like I could make an excerpt which deletes irrelevant sections, but the majority would be relevant. In particular, only Counts I through V would be relevant and all allegations from 1 to 70 but skipping paragraphs 16 through 19 (Defendants Reed and McKenna are just representatives of the state). If it would be clearer, I could excerpt out the sections which would not be relevant to Commission on Judicial Conduct but then there might be questions as to what other matters are before the federal court. What would you recommend or prefer? As always, your attention to this matter is appreciated.

Brian

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Exhibit E

Letter from Washington State
Commission of Judicial Conduct

Kurt C. Twitty

June 14, 2007

Case #5079



STATE OF WASHINGTON
COMMISSION OF JUDICIAL CONDUCT
P.O. BOX 1817, Olympia, WA 98507
(360) 753-4585 FAX (360)586-2918

June 14, 2007

CONFIDENTIAL

Brian Carr
11301 NE 7th St., Apt. J5
Vancouver, WA 98684

Re: Complaint No. 5079

Dear Mr. Carr:

I am writing in response to your e-mail received on this date. As you know, the Commission declined to reopen investigation of the above-referenced matter at its meeting on June 8, 2007. Specifically, the Commission voted to "dismiss as no basis to reopen." This matter, therefore, is now closed, and the confidentiality provisions of the Commission's rules no longer apply to you. (Please see [CJCRP 11\(a\)\(2\)](#) and (3) for details.) The commission members who considered your request to reopen at the June 8, 2007, meeting were: Wanda Briggs (Vice Chair), Antonio Cube, Wayne Ehlers, Hubert Locke, John Erlick, Margaret Ross, John Schultheis and John Sleeter. Under [CJCRP 11\(a\)\(1\)](#), I am not permitted to disclose how any particular member voted during initial proceedings.

I wish you the best.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Twitty".

Kurt C. Twitty
Senior Investigative Counsel

Exhibit F

Letter from Washington State
Commission of Judicial Conduct

Kurt C. Twitty

June 14, 2007

Case #5079



**STATE OF WASHINGTON
COMMISSION OF JUDICIAL CONDUCT
P.O. BOX 1817, Olympia, WA 98507
(360) 753-4585 FAX (360)586-2918**

June 25, 2007

CONFIDENTIAL

Brian Carr
11301 NE 7th St., Apt. J5
Vancouver, WA 98684

Re: Complaint No. 5079

Dear Mr. Carr:

This letter is in response to your e-mail to me on June 23rd. The Commission originally dismissed your complaint at its meeting on August 4, 2006. The commission members who deliberated on your complaint at that meeting were: Antonio Cube, Wayne Ehlers, Larry Goldberg, Hubert Locke, John Erlick, Margaret Ross, John Schultheis and John Sleeter. The complaint was "dismiss[ed] as legal."

The analysis for such a determination is complicated and reflects a fundamental limitation of the jurisdiction and function of the Commission. Generally, allegations that a judge (or judges in your case) misapplied the law is beyond the purview of the Commission's function. The issue of whether a judge's decision was legally correct is separate from the issue of whether the judge acted in accordance with the Code of Judicial Conduct. The Commission has no authority to act as a court of review, determining the legal or factual validity of any judge's decision. Absent some objective evidence of improper influence or motive, the Commission cannot take action based on the legal decision made by a judge, even in cases where it might appear that decision was incorrect. Dissatisfaction with a legal decision must be remedied through the legal process, which is separate from the Commission's jurisdiction.

The closure of your complaint does not demonstrate an opinion by the Commission that there was no legal error in your case. (Neither does it show that the Commission believed there was legal error.) Whether a judge has made a legal error is frequently a question on which disinterested, legally trained people can reasonably disagree. The dismissal simply means that the Commission members concluded there was not the kind of evidence of an ethical violation (as opposed to supposed misapplication of a law) that would lead to the filing of public charges.

Sincerely,

A handwritten signature in black ink, appearing to read "Kurt C. Twitty". The signature is stylized and somewhat cursive.

Kurt C. Twitty
Senior Investigative Counsel