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Kurt C. Twitty  
Commission on Judicial Conduct  
P.O. Box 1817  
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Dear Mr. Twitty,

October 16, 2006

Thank you for your inquiry into this complaint. The following is the requested documentation and legal citations for your consideration and presentation to the Commission.

Constitutional Limit on Number of Commissioners

1. [RCW 26.50](#) (domestic violence) cases in Washington are problematic as many cases can be handled by the District Court (a court of limited jurisdiction), but the final hearing in cases of a shared residence (as was the case in the matter at hand) must be transferred to the Superior Court (see [RCW 26.50.020](#) (5)) which can be disruptive and confusing. Since 1998, the Superior Court in Clark County addressed this problem by delegating authority to hear [RCW 26.50](#) matters to the District Court (see '[A Process Evaluation of the Clark County Domestic Violence Court](#)', Kleinhesselink and Mosher, Department of Sociology, Washington State University Vancouver). They did this by appointing all the District Court judges as Superior Court Commissioners.
2. That would be fine except that [Washington 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. This has far reaching effects in that if the these appointments are found invalid, the likely outcome is that all orders made by these improper Commissioners will be invalidated as will any arrests and / or convictions that follow. This would be quite disruptive, but the alternative is to just ignore the requirements of the constitution and give up on our government of law.
3. While a reasonable person could easily conclude the numeric limits placed on the appointment

of Superior Court Commissioners in the Washington constitution (Article IV, Section 23) are arcane, ineffective and even counter productive, the fact is enough reasonable people did not reach that conclusion when the issue was presented to the voters in 1981. *Ordell v. Gaddis*, 99 Wn.2d 409, 409-10, 662 P.2d 49 (1983) However, as long these numeric limits are held to be valid (see *Ordell*), it is not reasonable to simply ignore the limits. The danger of placing of expediency over legality is that once it becomes the norm in our society (as it must once we start down that slippery slope), within a decade we would no longer have a government of law, but, in all likelihood, a military dictatorship.

4. Attached as Exhibit A and B are copies of the orders appointing four Superior Court Commissioners in 2004 and 2005 and supporting affidavits as submitted to the Clark County Superior Court. It might be preferable to rely on the record in these matters (cases 04-2-08824-4 and 04-2-08908-9) as those copies were reviewed by the court and the court had opportunity to take exception to any inaccuracies.
5. It is clear that judges of Clark County Superior Court violated the numeric limits of the Washington State Constitution and that these limits are valid (see *Ordell*). This is a violation of their oath of office to uphold the constitution as ignoring the restrictions of the constitution can hardly be considered upholding it. Rather it severely undermines the constitution by declaring that it is alright to ignore the constitution when it is inconvenient (which would always be the case for any of the requirements of the constitution). Further, it is a violation of Canon 2 of the Code of Judicial Conduct which requires judges to respect and comply with the law. How can a judge who ignores the constitution be expected to support and enforce the requirements of the constitution?

#### Family Court Commissioners

6. In apparent recognition that the prior appointments of Superior Court Commissioners violated the numeric limits of the Washington Constitution and were not valid, in 2006 the Superior Court instead appointed the District Court Judges as Family Law Court Commissioners under RCW 26.12. However, the Family Court is a court of limited jurisdiction (*Ordell v. Gaddis*, 99 Wn.2d 409) and can only hear those matters listed in RCW 26.12.010 which does not

include [RCW 26.50](#) matters. Further, these recent appointments specifically do not include any authority under the Washington Constitution Article IV, Section 23 which is the source of Commissioners' authority to issue orders of duration longer than 14 days, *State v. Karas*, 108 Wn. App. 692, 700-02, 32 P.3d 1016 (2001). The individuals hearing [RCW 26.50](#) matters in Clark County at this time do not have jurisdiction to hear those matters and, hence, any Orders they issue are invalid.

7. Exhibit C is a copy of orders appointing these same individuals as Superior Court Commissioners in Clark County in 2006 except that the Honorable Osler is substituted for the Honorable Anders and are as received from the office of the Clark County Superior Court Chief Administrator. Exhibit D is a copy of a letter dated August 19, 2006 I sent to the Superior Court inquiring about other appointments and continued hearings under [RCW 26.50](#). Exhibit E is a copy of the response from the Court dated August 22, 2006.
8. The Superior Court directing [RCW 26.50](#) matters to these Family Court Commissioners is also a violation of the law and Canon 2 of the Code of Judicial Conduct which requires judges to respect and comply with the law. The continued refusal of the Superior Court judges to hear [RCW 26.50](#) matters is a violation of Canon 3 of performing the duties of their office.

#### Appellate Review

9. In Washington Court of Appeals case 32671-0-II, I submitted 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 submitted as evidence 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.

10. There are several possibilities for how this violates the Judicial Code of Conduct.

Canon 3 (A) (4) requires 'Judges should accord to every person ... full right to be heard according to law'. Either the Court of Appeals did not read the question presented (violating the canon cited), did not understand the question (raising questions of judicial disability), or intentionally misconstrued the arguments before it (violating the canon cited).

Again I would like to thank you and the Commission for your attention to this matter.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated: October 16, 2006

Location: Vancouver, WA

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