

SUPREME COURT OF FLORIDA

Inquiry Concerning a Judge, No. 13-25 Re: Andrew J. Decker, III

Decker · No. SC14-383 · Decided March 9, 2017

SUMMARY

The Florida Supreme Court reviews the Florida Judicial Qualifications Commission’s findings that Circuit Judge Andrew J. Decker, III, violated professional-conduct rules and judicial-campaign canons before taking office. The Court largely upholds the findings, with limited exceptions, and increases the recommended discipline from a ninety-day suspension to a six-month suspension, together with a public reprimand and payment of proceeding costs.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Jorge Labarga, Chief Justice; Barbara J. Pariente, Justice; R. Fred Lewis, Justice; Charles T. Canady, Justice; Ricky Polston, Justice; Alan Lawson, Justice; James E. C. Perry, Justice
JURISDICTION	Florida
DECIDED	March 9, 2017
DOCKET	SC14-383
DISPOSITION	remanded
PROCEDURAL POSTURE	Original proceeding reviewing the Florida Judicial Qualifications Commission Hearing Panel's findings and recommended discipline concerning a sitting circuit judge's pre-judicial attorney misconduct and judicial-campaign misconduct.
STANDARD OF REVIEW	The Court reviews the JQC Hearing Panel's factual findings for support by clear and convincing evidence and gives findings meeting that standard great weight. It independently reviews the recommended discipline to determine whether it should be approved or whether other discipline is appropriate.
PRECEDENTIAL VALUE	published
PARTIES	Florida Judicial Qualifications Commission v. Andrew J. Decker, III

TOPICS

election law

constitutional law

free speech

administrative law

PRACTICE AREAS

judicial discipline

legal ethics

election law

professional responsibility

constitutional law

QUESTIONS PRESENTED

1. Whether the JQC Hearing Panel's findings of violations of the Code of Judicial Conduct, Rules Regulating The Florida Bar, and section 105.071(3), Florida Statutes, were supported by clear and convincing evidence.
2. Whether a sitting judge may be disciplined through a JQC proceeding for misconduct committed while the judge was a practicing attorney or judicial candidate before taking office.
3. Whether Decker violated judicial-candidate rules by falsely denying a prior conflict-of-interest accusation and publicly identifying himself with a political party.
4. Whether Decker violated attorney-conduct rules by failing to disclose his representation of the presiding judge, mishandling conflicts in common representation, and making inaccurate disclosures in bankruptcy filings.
5. Whether Decker violated Rule of Professional Conduct 4-4.2(a) or related rules by meeting with Job White after White stated that he was no longer represented by counsel.
6. What discipline was appropriate for the proven cumulative misconduct.

HOLDINGS

1. A sitting judge may be disciplined through the JQC for rule and statutory violations committed while the judge was a practicing attorney or judicial candidate before taking the bench.
2. Decker's televised campaign statement that he had never been accused of a conflict of interest, which he did not timely correct, violated Canons 7A(3)(b) and 7A(3)(e)(ii), Rule of Professional Conduct 4-8.2(b), and Rule 4-8.4(c).
3. Decker's public statement that he was affiliated with the Republican Party violated Canon 7C(3), Rule of Professional Conduct 4-8.2(b), and section 105.071(3), Florida Statutes.
4. Decker violated Rules of Professional Conduct 4-8.4(c) and 4-8.4(d), and Rule of Discipline 3-4.3, by failing to tell opposing counsel that he represented the judge presiding over the opposing counsel's case.
5. Decker violated Rule of Professional Conduct 4-1.7(a) by continuing to represent jointly represented clients after conflicts became apparent and violated Rule 4-1.7(c) by failing to explain the implications, advantages, and risks of common representation.
6. Decker violated Rule of Professional Conduct 4-3.3 by making inaccurate statements about his connections to creditors and parties in interest and by failing to correct material omissions in his bankruptcy-court filings.
7. The majority held that Decker did not violate Rule of Professional Conduct 4-4.2(a) by meeting with White after White unequivocally stated that he was no longer represented by counsel, and it rejected

related Charge 8 violations for lack of evidentiary support.

8. The cumulative proven misconduct warranted a six-month suspension without pay, public reprimand, and payment of proceeding costs, but did not warrant removal from office.

KEY QUOTATIONS

“We review the findings of the Hearing Panel to determine if they are supported by clear and convincing evidence.” (at 18)

“Opposing counsel had an absolute right to know of the attorney-client relationship that the presiding judge had with then-attorney Decker, and had the right to make the decision, along with his client, as to whether his client would be prejudiced by the existence of that relationship.” (at 22)

“A party who like White has decided that he no longer desires to be represented by counsel should not be chained to counsel for purposes of Rule of Professional Conduct 4-4.2(a) until counsel withdraws under Florida Rule of Judicial Administration 2.505(f)(1).” (at 32)

“Although the series of acts by Judge Decker involving misconduct requires the imposition of a significant sanction, we have concluded that it does not merit removal from office.” (at 37)

FACTUAL BACKGROUND

Before taking office as a circuit judge, Andrew J. Decker, III, practiced law and campaigned for a circuit judgeship. During the campaign, he falsely stated that he had never been accused of a conflict of interest and publicly identified himself as a Republican, despite rules governing judicial-candidate conduct. As an attorney, he failed to disclose to opposing counsel that he represented the presiding judge in related litigation, inadequately advised jointly represented clients about conflicts and risks, continued representation despite conflicts, made inaccurate bankruptcy-court disclosures, and communicated with opposing parties in connection with a confidential settlement. The Court found clear and convincing evidence supporting most of the charged violations but rejected several Charge 8 violations.

PROCEDURAL HISTORY

The JQC Investigative Panel issued a notice of investigation in 2013 and filed a Second Amended Notice of Formal Charges on June 23, 2014. After an evidentiary hearing, the JQC Hearing Panel found Decker guilty of Charges 1, 3, 6, 7, and 8 through 16, recommended a ninety-day suspension, public reprimand, and costs, and directed a verdict on Charge 2 and found him not guilty of Charges 4 and 5. The Supreme Court of Florida reviewed the findings and sanction, rejected or modified several violations, increased the suspension to six months, and remanded to the JQC to determine costs.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Judge Decker was suspended without pay for six months effective immediately, ordered to pay the costs of the proceedings, and ordered to appear for a public reprimand. The matter was remanded to the Florida Judicial Qualifications Commission to determine the amount of costs.

CASES CITED

- In re Turner, 76 So. 3d 898, 901 (Fla. 2011)
- In re Henson, 913 So. 2d 579, 588 (Fla. 2005)
- In re Watson, 174 So. 3d 364, 369 (Fla. 2015)
- In re Davey, 645 So. 2d 398, 403 (Fla. 1994)
- In re Renke, 933 So. 2d 482, 486 (Fla. 2006)
- In re Graziano, 696 So. 2d 744, 753 (Fla. 1997)
- cert. denied, 136 S. Ct. 863 (2016)
- In re Users Sys. Servs, Inc., 22 S.W.3d 331, 334-35 (Tex. 2000)
- The Florida Bar v. Feinberg, 760 So. 2d 933, 939 (Fla. 2000)
- In re Dempsey, 29 So. 3d 1030, 1031, 1034 (Fla. 2010)
- In re Colodny, 51 So. 3d 430, 432-33 (Fla. 2010)
- In re Rodriguez, 829 So. 2d 857, 861 (Fla. 2002)
- In re McMillan, 797 So. 2d 560, 571 (Fla. 2001)
- In re Murphy, 181 So. 3d 1169, 1177, 1179 (Fla. 2015)
- In re Sloop, 946 So. 2d 1046, 1055 (Fla. 2006)
- In re Advisory Op. to Governor re Comm'n of Elected Judge, 17 So. 3d 265, 267 (Fla. 2009)