

SUPREME COURT OF FLORIDA

Inquiry Concerning a Judge No. 00-319 re Baker

813 So. 2d 36 (Fla. 2002) · No. No. 00-319 · Decided February 14, 2002

SUMMARY

The Florida Supreme Court approves the Judicial Qualifications Commission’s finding that Judge Joseph P. Baker violated Canon 3 B(7) of the Florida Code of Judicial Conduct by soliciting communications from computer consultants and experts about technical damages issues in a pending trial without the parties or their attorneys present. The court admonishes Judge Baker as the recommended sanction.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Wells, C.J.; Shaw, J.; Harding, J.; Anstead, J.; Pariente, J.; Lewis, J.; Quince, J.
JURISDICTION	Florida
DECIDED	February 14, 2002
DOCKET	No. 00-319
DISPOSITION	approved
PROCEDURAL POSTURE	The Supreme Court of Florida reviewed the Judicial Qualifications Commission's finding that Judge Joseph P. Baker violated Canon 3 B(7) of the Florida Code of Judicial Conduct and its recommendation that he receive an admonishment.
PRECEDENTIAL VALUE	Published opinion; precedential as to the interpretation and application of Canon 3 B(7) in the judicial-discipline context.

TOPICS

- civil procedure
- commercial litigation

PRACTICE AREAS

- judicial discipline
- judicial ethics
- legal ethics

QUESTIONS PRESENTED

1. Whether Judge Baker's communications with outside computer consultants and experts concerning technical issues in a pending case violated Canon 3 B(7) of the Florida Code of Judicial Conduct.
2. Whether the Supreme Court of Florida should approve the JQC's recommended sanction of admonishment.

HOLDINGS

1. A judge violates Canon 3 B(7) by soliciting communications from outside computer consultants or experts concerning substantive technical issues in a pending proceeding without the involvement or consent of the parties or their attorneys, unless a stated exception applies.
2. The court approved the JQC's finding and admonished Judge Baker to comply with his judicial oath and the Code of Judicial Conduct, specifically Canon 3 B(7).

KEY QUOTATIONS

“Canon 3 B(7) of the Florida Code of Judicial Conduct expressly prohibits “ex parte communications, or [consideration of] other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding.”” (813 So. 2d at 36)

“Accordingly, we agree with the JQC that Judge Baker violated the express language of Canon 3 B(7).” (813 So. 2d at 38)

FACTUAL BACKGROUND

During a May 1999 trial between Universal Business Systems, Inc. and Disney Vacation Club Management Corporation, Judge Joseph P. Baker solicited communications from computer consultants and experts concerning technical issues related to damages. He did so without the involvement of the litigants or their attorneys. Judge Baker admitted to the JQC that he made inquiries, although he could not identify all of the people contacted or recall everything they said.

PROCEDURAL HISTORY

While presiding over a trial, Judge Baker sought information from unnamed computer consultants and experts about technical damages issues without involving the parties or their attorneys. The JQC found that this conduct violated Canon 3 B(7) and recommended admonishment as a lesser sanction than public reprimand. The Supreme Court of Florida approved the JQC's finding and admonished Judge Baker.

DISPOSITION

approved

OPINION

PER CURIAM.

PER CURIAM. We have for review the finding of the Judicial Qualifications Commission (“JQC”) that Judge Joseph P. Baker violated Canon 3 B(7) of the Florida Code of Judicial Conduct, which prohibits ex parte and other communications outside the presence of the parties.

The JQC recommends that Judge Baker be admonished as a lesser sanction to public reprimand. We have jurisdiction. See art. V, § 12, Fla. Const. For the reasons expressed below, we approve the JQC’s finding. It is undisputed that Judge Baker, while presiding over a trial between Universal Business Systems, Inc. and Disney Vacation Club Management Corporation in May 1999, solicited communications from unnamed computer consultants and experts concerning technical issues relating to the issue of damages in the case pending before him without the involvement of the litigants or their attorneys.¹ However, Canon 3 B(7) of the Florida Code of Judicial Conduct expressly prohibits “ex parte communications, or [consideration of] other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding.” Canon 3 B(7) (emphasis added).

Moreover, the commentary to Canon 3 B(7) specifically provides that “[t]he proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.” Commentary, Canon 3 B(7) (emphasis added).² *38 Accordingly, we agree with the JQC that Judge Baker violated the express language of Canon 3 B(7).

Therefore, in accordance with the JQC’s recommendation, we admonish Judge Baker to comply with his oath as member of the judiciary and to abide by the Code of Judicial Conduct, specifically Canon 3 B(7).³ It is so ordered. WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS, and QUINCE, JJ., concur.. Judge Baker admitted this fact to the JQC hearing panel, and the Memorandum of Ruling drafted by Judge Baker expressly states that he made a few inquiries of computer consultants and experts, describing the general nature of [determining changes in software and the cost of duplicating those changes] and asking if there were a practical way to approximate the cost to a retailer to take the original UBS software and bringing it up to the ‘modified version’ and use at Disney....

They [the consultants and experts] suggested that UBS must know the cost of developing its own original software purchased by Disney. At the JQC hearing, however, Judge Baker said he could not remember with whom he talked or what they said, but also said that he had "since found out" that one of people he talked with was his son-in-law and another was a friend of his; but, again, he was not sure if there might have been others..

Canon 3 B(7) is followed by certain exceptions where, under limited circumstances, ex parte communications or other communications are permitted: (1) communications on scheduling and administrative matters, or emergencies that do not deal with substantive matters; (2) advice from disinterested experts on the law; (3) contact with other judges or court personnel, (4) contacts with

the parties' *38consent in an effort to settle a case; and (5) other communications expressly authorized by statute.

See Canon 3 B(7)(a)-(e). However, Judge Baker has not asserted, and we do not find, that any of these exceptions apply.. The commentary to Canon 3 B(7) specifically provides, "An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief as *amicus curiae*."