

REVIEW TRIBUNAL, APPOINTED BY THE SUPREME COURT OF TEXAS

In re Terry A. Canales

113 S.W.3d 56 (Tex. Rev. Trib. 2003) · No. No. 84 · Decided September 4, 2003

SUMMARY

The Texas Review Tribunal considered an appeal from the Texas State Commission on Judicial Conduct's recommendation that Judge Terry A. Canales be removed from office and permanently barred from holding judicial office. The case involved allegations of sexually suggestive comments and nonconsensual physical touching of three women, as well as challenges concerning pleading variance, evidentiary sufficiency, procedural standards, discovery, and the appropriate burden of proof. The tribunal sustained a pleading-variance issue concerning one allegation but rejected the challenge to the preponderance-of-the-evidence standard.

CASE DETAILS

COURT	Review Tribunal, appointed by the Supreme Court of Texas
WRITING FOR THE COURT	Richard Barajas, Chief Justice; Sam Day, Justice; Michael O'Neill, Justice; Donald Ross, Justice; Sam Nuchia, Justice; Eva Guzman, Justice; Sandee Marion, Justice
JURISDICTION	Texas
DECIDED	September 4, 2003
DOCKET	No. 84
DISPOSITION	approved
PROCEDURAL POSTURE	Appeal by a district judge from the Texas State Commission on Judicial Conduct's recommendation that he be removed from office and permanently barred from holding judicial office.
STANDARD OF REVIEW	The Commission's adopted findings are reviewed under the legal- and factual-sufficiency standards applicable to civil findings by a trial court or jury. The tribunal considers only supporting evidence on a legal-sufficiency challenge, examines the entire record on factual sufficiency, and may not substitute its findings for those of the Commission or resolve credibility conflicts.
PRECEDENTIAL VALUE	Published state court opinion; precedential value not otherwise specified in the text.

TOPICS

appellate procedure

standard of review

evidence

preservation of error

remedies

PRACTICE AREAS

judicial discipline

appellate procedure

constitutional law

evidence

remedies

QUESTIONS PRESENTED

1. Whether the Commission's finding concerning the secretary's complaint was supported by the live formal notice when the notice and evidence alleged a different year.
2. Whether the proper burden of proof in judicial removal proceedings is preponderance of the evidence or clear and convincing evidence.
3. Whether the evidence was legally and factually sufficient to support the Commission's findings concerning the complaints of the pregnant daughter of the bailiff and the district attorney's office employee.
4. Whether the respondent preserved complaints concerning discovery and allegedly exculpatory records.
5. Whether the proceedings violated the respondent's constitutional rights.
6. Whether removal and a permanent bar from judicial office were excessive sanctions.

HOLDINGS

1. A twelve-month variance between the year alleged in the formal notice and the year established by the evidence was substantial, misleading, and potentially prejudicial; the Commission was required to amend the formal notice or obtain a trial amendment before relying on the changed date.
2. The proper burden of proof in a Texas judicial removal proceeding is preponderance of the evidence, not clear and convincing evidence.
3. The evidence was legally and factually sufficient to support the Commission's misconduct findings involving the pregnant daughter of the bailiff and the district attorney's office employee.
4. Removal from judicial office and a permanent bar from holding judicial office were appropriate and not excessive sanctions for the sustained misconduct.

KEY QUOTATIONS

"It is well settled law in the State that the legal standard for removal proceedings is a "preponderance of the evidence" standard rather than a "clear and convincing evidence" standard as Respondent argues." (67)

"TERRY A. CANALES IS HEREBY REMOVED AS JUDGE OF THE 79TH JUDICIAL DISTRICT COURT OF THE STATE OF TEXAS AND IS FOREVER BARRED FROM HOLDING JUDICIAL OFFICE IN THE STATE OF TEXAS." (74)

FACTUAL BACKGROUND

The Commission found that Judge Terry A. Canales engaged in unsolicited, sexually suggestive conduct and nonconsensual touching involving three young women, including his court secretary, an eighteen-year-old part-time district attorney's office employee, and the pregnant daughter of his court bailiff. Much of the conduct occurred during court hours and in Canales's judicial chambers, and included forceful kissing, fondling, sexually suggestive telephone remarks, and physically preventing one woman from leaving. The tribunal found legally and factually sufficient evidence supporting the findings involving the latter two women, while sustaining a pleading-and-proof variance concerning the date alleged for the secretary's complaint.

PROCEDURAL HISTORY

The Commission conducted formal proceedings and found by a preponderance of the evidence that Judge Canales engaged in willful or persistent conduct inconsistent with the proper performance of judicial duties and casting public discredit on the judiciary. The Commission recommended removal and a permanent bar from judicial office. The Supreme Court of Texas appointed a seven-justice review tribunal to review the recommendation. The tribunal sustained one procedural issue concerning a variance between the formal notice and the proof, but affirmed the recommendation based on the remaining misconduct findings and issues.

DISPOSITION

approved

CASES CITED

- In re Barr, 13 S.W.3d 525 (Tex. Rev. Trib. 1998)
- In re Thoma, 873 S.W.2d 477 (Tex. Rev. Trib. 1994)
- In re Lowery, 999 S.W.2d 639 (Tex. Rev. Trib. 1998)
- In re Brown, 512 S.W.2d 317 (Tex. 1974)
- In re Laughlin, 265 S.W.2d 805 (Tex. 1954)
- Safety Casualty Co. v. Wright, 160 S.W.2d 238 (Tex. 1942)
- Bader v. Cox, 701 S.W.2d 677 (Tex. App.—Dallas 1985, writ ref'd n.r.e.)
- Roark v. Allen, 633 S.W.2d 804 (Tex. 1982)
- Stone v. Lawyers Title Insurance Corp., 554 S.W.2d 183 (Tex. 1977)
- Grand Prairie Independent School District v. Vaughan, 792 S.W.2d 944 (Tex. 1990)
- Leyva v. Leyva, 960 S.W.2d 732 (Tex. App.—El Paso 1997, no writ)
- Ludlow v. DeBerry, 959 S.W.2d 265 (Tex. App.—Houston [14th Dist.] 1997, no writ)
- Chance v. Chance, 911 S.W.2d 40 (Tex. App.—Beaumont 1995, writ denied)
- Fredonia State Bank v. General American Life Insurance Co., 881 S.W.2d 279 (Tex. 1994)
- In re King's Estate, 244 S.W.2d 660 (Tex. 1951)
- Oechsner v. Ameritrust Texas, N.A., 840 S.W.2d 131 (Tex. App.—El Paso 1992, writ denied)
- Benoit v. Wilson, 239 S.W.2d 792 (Tex. 1951)

- *Montgomery Ward & Co. v. Scharrenbeck*, 204 S.W.2d 508 (Tex. 1947)
- *Worsham Steel Co. v. Arias*, 831 S.W.2d 81 (Tex. App.—El Paso 1992, no writ)

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