

SUPREME COURT OF VIRGINIA

Judicial Inquiry and Review Commission of Virginia v. James Michael Shull

651 S.E.2d 648 (Va. 2007) · No. Record No. 071014 · Decided November 2, 2007

SUMMARY

The Supreme Court of Virginia considered formal judicial-misconduct charges against James Michael Shull, a district court judge. The court addressed its authority to review the Commission's suspension procedures and independently evaluated alleged violations involving an ex parte communication, a courtroom coin toss, and the treatment of a litigant during a custody and protective-order hearing.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice Barbara Milano Keenan; Chief Justice Hassell; Justice Keenan; Justice Koontz; Justice Lemons; Justice Agee; Senior Justice Carrico; Senior Justice Stephenson
JURISDICTION	Virginia
DECIDED	November 2, 2007
DOCKET	Record No. 071014
DISPOSITION	other
PROCEDURAL POSTURE	The Judicial Inquiry and Review Commission filed a formal complaint in the Supreme Court of Virginia's original jurisdiction seeking censure or removal of Judge Shull for violations of the Canons of Judicial Conduct.
STANDARD OF REVIEW	The Supreme Court conducts an independent, de novo review of the record and makes its own factual determinations. It determines whether clear and convincing evidence establishes a violation of the Canons; it gives the Commission's findings and credibility determinations only such weight as the Court considers appropriate.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Virginia
PARTIES	Judicial Inquiry and Review Commission of Virginia v. James Michael Shull, Judge of the Thirtieth Judicial District

TOPICS

constitutional law due process family law procedure civil procedure

PRACTICE AREAS

judicial discipline constitutional law professional responsibility family law procedure civil procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court of Virginia had constitutional or statutory authority to review the Commission's procedures or decision concerning Judge Shull's temporary suspension.
2. Whether clear and convincing evidence established that Judge Shull violated the Canons of Judicial Conduct by twice tossing a coin to decide a visitation issue, initiating an ex parte telephone call concerning a disputed matter, and twice requiring an unrepresented litigant to lower her pants in court to display a wound.
3. Whether the established misconduct constituted misconduct in office and conduct prejudicial to the proper administration of justice requiring censure or removal.
4. Whether removal from office was the appropriate sanction.

HOLDINGS

1. The Supreme Court lacked constitutional or statutory authority to review the Commission's suspension-hearing procedures or its decision to continue Judge Shull's suspension, and therefore did not reach the merits of his due-process challenges to that proceeding.
2. The Commission proved by clear and convincing evidence that Judge Shull violated the Canons by twice tossing a coin in court to resolve a visitation dispute, initiating an improper ex parte telephone call concerning a disputed factual matter, and twice requiring Giza to lower her pants in court to display her wound.
3. Judge Shull's conduct constituted misconduct while in office and conduct prejudicial to the proper administration of justice.
4. Removal from office, rather than censure, was warranted.

KEY QUOTATIONS

"In order for our justice system to maintain the confidence and respect of the public, judicial decisions must be based on the evidence and pertinent law." (658)

"We hold that Judge Shull's actions in the two cases, as established by clear and convincing evidence, constitute "misconduct while in office" and "conduct prejudicial to the proper administration of justice."" (659)

"Therefore, to ensure that all citizens will be able to have full confidence they will be treated fairly and accorded their rightful dignity in all future legal proceedings in the Thirtieth Judicial District, this Court will

order that James Michael Shull be removed immediately from the office of Judge of the Thirtieth Judicial District” (660)

FACTUAL BACKGROUND

During a custody and protective-order hearing, Judge Shull twice directed an unrepresented litigant, Tammy L.H. Giza, to lower her pants so he could inspect a thigh wound, despite knowing of her prior mental-health commitment and self-mutilation history. He also initiated an ex parte telephone call to a hospital to obtain information concerning the disputed wound. In a separate visitation proceeding, he twice tossed a coin to resolve which parent would receive the preferred portion of a holiday visitation period. Judge Shull admitted the coin toss and ex parte call violated the Canons and admitted that he initiated both viewings of Giza's wound.

PROCEDURAL HISTORY

The Commission temporarily suspended Judge Shull after incidents during custody, visitation, and protective-order proceedings. Following a suspension hearing, the Commission issued formal charges and conducted an evidentiary hearing. It found the charges well founded and sufficiently grave to support retirement, censure, or removal, then filed a formal complaint in the Supreme Court of Virginia. The Supreme Court independently reviewed the record, found clear and convincing evidence of three Canon violations, and ordered Judge Shull removed from office.

DISPOSITION

other

CASES CITED

- Judicial Inquiry & Review Comm'n v. Peatross, 269 Va. 428, 611 S.E.2d 392 (2005)
- Judicial Inquiry & Review Comm'n v. Lewis, 264 Va. 401, 568 S.E.2d 687 (2002)
- Middleton v. Johnston, 221 Va. 797, 273 S.E.2d 800 (1981)
- Judicial Inquiry & Review Comm'n v. Elliott, 272 Va. 97, 630 S.E.2d 485 (2006)
- Board of Supervisors of Fairfax County v. Board of Zoning Appeals of Fairfax County, 271 Va. 336, 626 S.E.2d 374 (2006)
- America Online, Inc. v. Anonymous Publicly Traded Co., 261 Va. 350, 542 S.E.2d 377 (2001)
- Humphreys v. Commonwealth, 186 Va. 765, 43 S.E.2d 890 (1947)
- Shelton v. Sydnor, 126 Va. 625, 102 S.E. 83 (1920)
- Riverside Hospital, Inc. v. Johnson, 272 Va. 518, 636 S.E.2d 416 (2006)
- Commonwealth v. Harley, 256 Va. 216, 504 S.E.2d 852 (1998)
- Judicial Inquiry & Review Comm'n v. Maurice, Record No. 770472 (Sept. 1, 1977)