

SUPREME COURT OF WASHINGTON

In re Disciplinary Proceeding Against Sanders

145 P.3d 1208 (Wash. 2006) · No. No. 200,271-4 · Decided October 26, 2006

SUMMARY

The Washington Supreme Court reviewed de novo a judicial disciplinary proceeding involving Justice Richard B. Sanders's visit to the Special Commitment Center and conversations with residents whose cases were pending before the court. The court held that his conduct violated Canons 1 and 2(A) of the Washington Code of Judicial Conduct by creating an appearance of partiality through ex parte contact. The court affirmed the Commission on Judicial Conduct's sanction of admonishment and rejected Sanders's due process and discovery arguments.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	C. Kenneth Grosse; Appelwick; Cox; Baker; Quinn-Brintnall; Hunt; Brown; Sweeney; Houghton
JURISDICTION	Washington
DECIDED	October 26, 2006
DOCKET	No. 200,271-4
DISPOSITION	affirmed
PROCEDURAL POSTURE	Justice Richard B. Sanders filed a notice of contest under Discipline Rules for Judges 3 after the Washington Commission on Judicial Conduct found violations of Canons 1 and 2(A) of the Code of Judicial Conduct and imposed an admonishment.
STANDARD OF REVIEW	De novo review. The Supreme Court independently determines the facts and law, while giving considerable weight to the Commission's credibility determinations and serious consideration to its sanction recommendation. The Commission must prove factual findings by clear, cogent, and convincing evidence.
PRECEDENTIAL VALUE	Published Washington Supreme Court en banc opinion; precedential.
PARTIES	Washington Commission on Judicial Conduct v. Richard B. Sanders

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QUESTIONS PRESENTED

1. Whether Justice Sanders's conduct violated Canons 1 and 2(A) of the Code of Judicial Conduct even though the Commission did not find a direct violation of Canon 3(A)(4).
2. Whether Canons 1 and 2(A), applied to Justice Sanders's conduct, provided a sufficiently specific basis for discipline and avoided a vagueness problem.
3. Whether the Commission's discovery rulings denied Justice Sanders due process.
4. Whether the Commission's admonishment was an appropriate sanction.

HOLDINGS

1. A judicial officer's visit to a facility for sexually violent predators is not inherently improper, but conversations with residents about reasons for confinement or issues pending before the judge's court may violate the Code of Judicial Conduct. Justice Sanders's ex parte contact with actual or foreseeable litigants concerning volitional control created an appearance of partiality and violated Canons 1 and 2(A).
2. The Commission's failure to find a violation of Canon 3(A)(4) did not preclude findings that Justice Sanders violated Canons 1 and 2(A). Canon 1, together with the more specific restraint in Canon 2(A), provided a sufficiently specific basis for discipline under the circumstances.
3. Justice Sanders was not denied due process by the Commission's handling of his discovery requests.
4. The Commission correctly applied the ten nonexclusive sanction factors, and admonishment was an appropriate and sufficient sanction.

KEY QUOTATIONS

“A visit by a judicial officer to a special facility for sexually violent predators is not in itself inappropriate conduct under the Code of Judicial Conduct.” (145 P.3d at 1209)

“However, conversations with the residents of the facility concerning the reasons for their confinement, particularly when one or more of these residents has a matter or matters pending before the court on which the judge sits, can violate the Code of Judicial Conduct.” (145 P.3d at 1209)

“His conduct created an appearance of partiality as a result of ex parte contact.” (145 P.3d at 1209)

“Under the circumstances of this case, Canon 1 taken in conjunction with Canon 2(A) provides a sufficiently specific basis to find a violation of the Code of Judicial Conduct.” (145 P.3d at 1212)

FACTUAL BACKGROUND

Justice Sanders visited the Special Commitment Center for sexually violent predators despite warnings from fellow justices about possible ex parte contact with litigants. During the visit, he accepted documents from inmates and asked residents, including individuals with cases pending before the Washington Supreme Court, about their confinement and the issue of volitional control. Volitional control was a pivotal issue in *In re Detention of Thorell*, a pending consolidated case involving at least one resident with whom Sanders met, creating a foreseeable appearance of partiality.

PROCEDURAL HISTORY

The Commission investigated a complaint concerning Justice Sanders's visit to the Special Commitment Center, found probable cause, conducted a fact-finding hearing, and determined that his conduct violated Canons 1 and 2(A), but not Canon 3(A)(4). Justice Sanders contested the Commission's decision. The Washington Supreme Court reviewed the disciplinary proceeding de novo, independently evaluated the facts and law, upheld the violations, rejected Sanders's due process and vagueness-related arguments, and approved the admonishment.

DISPOSITION

affirmed

CASES CITED

- *In re Disciplinary Proceedings Against Turco*, 137 Wash. 2d 227, 970 P.2d 731 (1999)
- *In re Deming*, 108 Wash. 2d 82, 736 P.2d 639 (1987)
- *In re Disciplinary Proceeding Against Ritchie*, 123 Wash. 2d 725, 870 P.2d 967 (1994)
- *In re Detention of Thorell*, 149 Wash. 2d 724, 72 P.3d 708 (2003)
- *State v. Graham*, 91 Wash. App. 663, 960 P.2d 457 (1998)
- *Sherman v. State*, 128 Wash. 2d 164, 905 P.2d 355 (1995)
- *In re Disciplinary Proceeding Against Sanders*, 135 Wash. 2d 175, 955 P.2d 369 (1998)
- *In re McCully*, 942 P.2d 327 (Utah 1997)
- *In re Parro*, 847 So. 2d 1178 (La. 2003)
- *Papa v. New Haven Federation of Teachers*, 186 Conn. 725, 444 A.2d 196 (1982)
- *Rice v. McKenzie*, 581 F.2d 1114 (4th Cir. 1978)
- *In re Cieminski*, 270 N.W.2d 321 (N.D. 1978)
- *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307 (2d Cir. 1988)
- *Rhinehart v. Seattle Times Co.*, 98 Wash. 2d 226, 654 P.2d 673 (1982), *aff'd*, 467 U.S. 20, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984)

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