

SUPREME COURT OF FLORIDA

Inquiry Concerning a Judge, No. 03-98 re Andrews

875 So. 2d 441 (Fla. 2004) · No. No. 03-98 · Decided May 13, 2004

SUMMARY

The Florida Supreme Court approved the Judicial Qualifications Commission’s recommendation that Judge Robert Lance Andrews receive a public reprimand for making inappropriate statements to a reporter about Novartis Pharmaceuticals while presiding over discovery proceedings. The Court found that the admitted conduct evidenced bias and violated Canons 1, 2, and 3 of the Code of Judicial Conduct, and ordered Judge Andrews to appear for administration of the reprimand.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Anstead, C.J.; Wells, J.; Pariente, J.; Lewis, J.; Quince, J.; Cantero, J.; Bell, J.
JURISDICTION	Florida
DECIDED	May 13, 2004
DOCKET	No. 03-98
DISPOSITION	approved
PROCEDURAL POSTURE	The Supreme Court of Florida reviewed the Investigative Panel of the Judicial Qualifications Commission's recommendation that Judge Robert Lance Andrews receive a public reprimand for judicial misconduct. Judge Andrews stipulated to the findings of guilt and recommended discipline.
STANDARD OF REVIEW	The Court reviews JQC findings to determine whether they are supported by clear and convincing evidence and reviews the recommended discipline to determine whether it should be approved. The Court gives the JQC's findings and recommendations great weight, but retains ultimate responsibility for the determination.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; precedential regarding review of JQC findings and judicial discipline.
PARTIES	Florida Judicial Qualifications Commission v. Judge Robert Lance Andrews

TOPICS

discovery dispute commercial litigation civil procedure

PRACTICE AREAS

judicial discipline judicial ethics professional responsibility discovery

QUESTIONS PRESENTED

1. Whether the JQC's findings that Judge Andrews violated the Code of Judicial Conduct were supported by clear and convincing evidence.
2. Whether a public reprimand was the appropriate discipline for Judge Andrews's judicial misconduct.

HOLDINGS

1. The JQC's findings that Judge Andrews's statements evidenced bias against Novartis and violated canons 1, 2, and 3 of the Code of Judicial Conduct were supported by clear and convincing evidence.
2. A public reprimand was an appropriate sanction for Judge Andrews's misconduct.

KEY QUOTATIONS

“While this Court gives the findings and recommendations of the JQC great weight, ‘the ultimate power and responsibility in making a determination rests with this Court.’” (875 So. 2d at 442)

“Accordingly, we review the findings to ensure that there is “clear and convincing evidence” to support the alleged ethical violations—a standard of proof which has been described as “more than a ‘preponderance of the evidence,’ but the proof need not be ‘beyond and to the exclusion of a reasonable doubt.’ ”” (875 So. 2d at 442)

FACTUAL BACKGROUND

While presiding over *Carnato v. Novartis Pharmaceuticals Corp.*, Judge Andrews made statements to a reporter characterizing Novartis's discovery conduct and litigation strategy, including that Novartis was trying to bury plaintiffs in documents and that its strategy had backfired. Novartis had produced more than one million documents, claimed privilege, and sought an in-camera inspection, leading Judge Andrews to appoint a special master at Novartis's expense. The JQC alleged that the statements evidenced bias against Novartis, and Judge Andrews admitted the conduct.

PROCEDURAL HISTORY

The JQC charged Judge Andrews with making inappropriate statements to a reporter about Novartis Pharmaceuticals while presiding over litigation involving discovery of more than one million documents. Judge Andrews admitted the alleged conduct and stipulated that the Investigative Panel could enter findings and recommend a reprimand without further proceedings before the Hearing Panel. The Supreme Court reviewed and approved the recommendation.

DISPOSITION

approved

REMAND INSTRUCTIONS

Judge Andrews was commanded to appear before the Supreme Court of Florida for administration of a public reprimand at a time established by the clerk.

CASES CITED

- In re Kinsey, 842 So. 2d 77, 85 (Fla. 2003)
- In re Davey, 645 So. 2d 398, 404 (Fla. 1994)
- In re Hayes, 541 So. 2d 105 (Fla. 1989)
- In re Frank, 753 So. 2d 1228, 1242 (Fla. 2000)

OPINION

PER CURIAM.

PER CURIAM. We review the recommendation of the Investigative Panel of the Judicial Qualifications Commission (JQC) that Judge Robert Lance Andrews receive the sanction of a public reprimand for his judicial misconduct.¹ We approve the recommendation.

The JQC filed charges against Judge Andrews, alleging that while he presided over the case of *Carnato v. Novartis Pharmaceuticals Corp.*, he made various inappropriate statements concerning the defendant, Novartis, in an interview with a reporter for the *Daily Business Review*. It was alleged he made the following statements: 1. Novartis was trying to bury the plaintiffs in documents; 2.

Novartis has only itself to blame for developments in the litigation; 3. The defense's strategy backfired; and 4. The entire database [the Special Master is creating at Novartis Pharmaceuticals' expense] would provide a national plaintiffs blueprint for filing suit against Novartis over Parlodel [the drug in the case.]

The comments were made in reference to a discovery request made by the plaintiff in the case. The defendant, Novartis, responded to the discovery request by producing over one million documents.² Novartis claimed that the documents were privileged and requested an in-camera inspection of the documents. Judge Andrews appointed a special master to review the documents, at great expense to Novartis.

Novartis then sought to have the in-camera inspection suspended. The JQC alleged that the statements were inappropriate and evidenced a bias against the defendant, Novartis. The JQC and Judge Andrews presented a stipulation to this Court pursuant to article V, section 12 of the Florida Constitution, and rule 6(j) of the JQC's rules.

In that stipulation, Judge Andrews admitted to the conduct alleged and did not contest the findings of guilt and recommendation of discipline. The Investigative Panel of the JQC recommended a public reprimand of Judge Andrews.

We note that ordinarily the JQC, not the Investigative Panel of the JQC, submits its findings and recommendations to this Court. However, in this case Judge Andrews specifically stipulated that “Without further reference to the Hearing Panel or a trial before that body, the Investigative Panel may enter its findings of guilt on the charges³ and recommend to the Supreme Court that the respondent be reprimanded for this conduct.” This Court reviews the findings of the JQC to determine if they are supported by clear and convincing evidence and reviews the recommendation of discipline to determine whether it should be approved. “While this Court gives the findings and recommendations of the JQC great weight, ‘the ultimate power and responsibility in making a determination rests with this Court.’ ” *In re Kinsey*, 842 So.2d 77, 85 (Fla.2003) (footnote omitted) (quoting *In re Davey*, 645 So.2d 398, 404 (Fla.1994)).

Accordingly, we review the findings to ensure that there is “clear and convincing evidence” to support the alleged ethical violations—a standard of proof which has been described as “more than a ‘preponderance of the evidence,’ but the proof need not be ‘beyond and to the exclusion of a reasonable doubt.’ ” *Id.* (quoting *In re Davey*, 645 So.2d at 404). Judge Andrews’ alleged conduct violates canons 1, 2, and 3 of the Code of Judicial Conduct.

The JQC’s findings in this case show that the statements made by Judge Andrews evidenced a bias against Novartis. Judge Andrews admitted to the conduct alleged by the JQC. Accordingly, the JQC’s findings are supported by clear and convincing evidence.

The second issue for this Court is whether the JQC’s recommendation of a public reprimand is an appropriate discipline in this case. An analogous case where a public reprimand was administered is *In re Hayes*, 541 So.2d 105 (Fla.1989).

The judge in *Hayes*, while presiding over a murder trial, discussed his opinions and reactions to the trial with a journalist, with knowledge that the discussions would be used by the journalist in a publication. Statements attributed to Hayes were later published by the journalist.

The Court held that a public reprimand was the appropriate discipline. We accept the JQC’s recommendation of a public reprimand for Judge Andrews, which is consistent with this Court’s precedent as to the appropriate sanction for this type of judicial misconduct. See *id.* We hereby command Judge Andrews to appear before this Court for the administration of a public reprimand at a time to be established by the clerk of this Court.

See *In re Frank*, 753 So.2d 1228, 1242 (Fla.2000). It is so ordered. ANSTEAD, C.J., and WELLS, PARIENTE, LEWIS, QUINCE, CANTERO, and BELL, JJ., concur.. We have jurisdiction. See art. V, § 12, Fla. Const.. The 247 boxes produced by Novartis contained "a total doocument [sic]

count of approximately 1,088,282 individual pieces of paper.” Transcript of hearing at 25, Carnoto v. Sandoz Pharmaceuticals Corp., (Fla 17th Cir., Aug.

8, 2002).. The Notice of Formal Charges in this case did not specify which canons of the Code of Judicial Conduct Judge Andrews allegedly violated. However, canons 1, 2, and 3 were mentioned in the Notice of Investigation and the Findings and Recommendations of the Investigative Panel state that “the respondent is guilty as charged in the Notice of Investigation.” Judge Andrews has raised no objection to the Findings and Recommendations of the Investigative Panel.