

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED

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In Re the Matter of:

The Honorable Eugene C. Anderson
Judge
Skagit County District Court
Public Safety Building
600 South Third
Mt. Vernon, Washington 98273

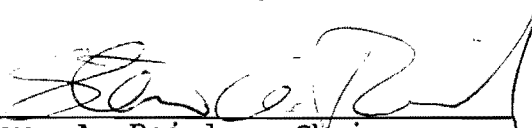
NO. 89-793-F-15

COMMISSION ON
JUDICIAL CONDUCT


COMMISSION DECISION

1 The Commission, having read the record, the written Report and
2 Recommendation of the Fact-Finder, and having considered the
3 Statement of Objections, Memorandum and Briefs of Respondent Judge
4 and Commission Counsel, and Argument presented on August 3, 1990,
5 does hereby find that the Report and Recommendation of the Fact-
6 Finder is supported by clear, cogent and convincing evidence. The
7 Commission adopts said Report, which is attached hereto, and hereby
8 orders Admonishment of the Honorable Eugene C. Anderson for his
9 conduct in violation of Canon 3(A)(5) set forth in the Report and
10 Recommendation of the Fact-Finder.

11 DATED this 7th day of September, 1990.

12 
13 Steven A. Reisler, Chair

ATTEST:


Ruth Coffin Schroeder, Secretary

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COMMISSION ON
JUDICIAL CONDUCT

BEFORE THE COMMISSION OF JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In Re the Matter of) NO. 89-793-F-15
Eugene C. Anderson, Judge) REPORT AND
Skagit County District Court,) RECOMMENDATION

I.

INTRODUCTION

A fact-finding hearing relating to the above matter was held on April 5, 1990, pursuant to order of the Commission on Judicial Conduct and in accordance with the Commission on Judicial Conduct Rules (CJCR). A copy of the Formal Complaint was personally delivered to the Honorable Eugene C. Anderson (Respondent) on January 23, 1990. His answer was filed with the Commission on February 6, 1990. Notice of fact-finding hearing was filed on March 13, 1990.

The Commission on Judicial Conduct appointed Mary L. Gaudio to serve as Master. Ms. Gaudio conducted the fact-finding hearing.

Respondent was present with his counsel, Monica Anderson. The Commission on Judicial Conduct was represented by counsel, David D. Hoff.

The Master, having heard and considered the testimony of the witnesses called, having reviewed the

1 exhibits, records and files herein, having considered the
2 arguments of counsel and the brief submitted by each of
3 them, finds by clear, cogent and convincing evidence the
4 following:

5 II.

6 **FINDINGS OF FACT**

7 2.1 Respondent is now and at all times mentioned
8 herein a Judge of the Skagit County District Court, Mt.
9 Vernon, Washington. He first served on said Court on a
10 part-time basis in 1959. He is currently serving in a
11 full-time capacity and the caseload has increased
12 dramatically over the years. The Court, in 1987,
13 serviced by two judges, handled in excess of 22,000 cases
14 filed that year. Respondent has been active in Bar
15 Association activities. To his knowledge, he has never
16 had any other complaint made against him.

17 2.2 On September 4, 1986, an action was commenced
18 by Skagit Bonded Collectors, Inc. against Everett Oman in
19 the Skagit County District Court, Cause No. CV86-905.
20 The claim had been assigned to the plaintiff by Water
21 Damage Restorers for collection of amounts it claimed
22 were due and owing by Mr. Oman for water damage services
23 rendered to Mr. Oman at his rental property where a pipe
24 had burst and partially flooded the residence. The total
25 amount of the plaintiff's claim was in the principal sum
26 of \$637.07, plus costs and interest.

1 2.3 Thereafter, on September 30, 1986, Mr. Oman
2 filed a letter with the Skagit County District Court
3 which was treated as an answer and counterclaim. Mr.
4 Oman was claiming damages to his house which allegedly
5 had been caused by negligent work performed by Water
6 Damage Restorers.

7 2.4 Thereafter, Water Damage Restorers was
8 substituted as plaintiff and Mr. Ralph I. Freese appeared
9 for the plaintiff to proceed with its claim and to defend
10 Mr. Oman's counterclaim.

11 2.5 On January 14, 1987, Mr. Freese noted the case
12 for a trial setting. The case was set for trial on March
13 17, 1987. Mr. Freese made a motion to authorize
14 discovery and an order allowing discovery was signed
15 February 9, 1987. The motion was not contested and an
16 order was signed without either counsel appearing for the
17 motion.

18 2.6 The trial was heard on March 17, 1987, before
19 Respondent. Mr. Freese appeared for Water Damage
20 Restorers and Mr. Oman appeared pro se. After trial, the
21 Court dismissed both the plaintiff's claim and the
22 defendant's counterclaim. The plaintiff's claim was
23 dismissed because Respondent determined it had failed to
24 establish a contractual relationship with the defendant
25 which the court believed was the only basis upon which
26 the plaintiff's claim could be made. Mr. Oman's
 counterclaim was dismissed because Respondent believed he

1 had failed to prove any damages had resulted from the
2 services of Water Damage Restorers.

3 2.7 On March 26, 1987, Mr. Freese filed a Motion
4 for Reconsideration and a Post-trial Motion for
5 Attorney's Fees. On the same date, Mr. Freese sent a
6 letter to Respondent and Mr. Oman that he had not noted
7 the motion for a hearing date because he had "nothing to
8 add by way of argument to the pleadings, . . ." He
9 requested that the court rule on the written materials.

10 2.8 On April 6, 1987, Julie Bjorn, Civil Clerk of
11 the Skagit County District Court, wrote a letter to Mr.
12 Freese (Exhibit 5) indicating that Judge Anderson had
13 reviewed his request for a motion for reconsideration and
14 was "asking that one of the parties note it for hearing
15 on a Monday at 1:30 p.m." Mr. Freese then noted the
16 motion and a hearing on the Motion for Reconsideration
17 and Motion for Attorney's Fees was heard on May 4, 1987.
18 At that hearing, Mr. G. Bryan Paxton appeared to
19 represent Mr. Oman and Mr. Freese appeared on behalf of
20 his client. It was Mr. Freese's contention on behalf of
21 his client that, even though the court found that there
22 was no express contract between his client and Mr. Oman,
23 that his client should be able to recover the value of
24 its services on a quantum meruit theory. This contention
25 raised the question of whether the District Court has
26 jurisdiction to grant an equitable remedy. Mr. Freese

1 did not have authority available on that precise issue
2 and indicated he could and would provide additional
3 authority to the court.

4 2.9 There also arose the question of attorney's
5 fees and whether, since Mr. Oman had asserted a
6 counterclaim, he was an unsuccessful plaintiff with
7 respect to that claim, such that he would be subject to
8 attorney's fees being awarded against him in favor of Mr.
9 Freese's client. There was also a question raised about
10 whether Mr. Paxton should also be awarded attorney's fees
11 since Mr. Freese's client had been unsuccessful on its
12 claim.

13 2.10 After substantial discussion, the court
14 continued the hearing to June 15, 1987, at 1:30 p.m. to
15 allow both parties the opportunity to provide briefing
16 with reference to the equitable remedy issue and
17 attorneys' fees. Respondent specifically stated, "I'm
18 not requiring either one of you to be back here for the
19 oral hearing. I can just render a minute judgment. If
20 you'd like, save yourselves some time on that."

21 2.11 On May 14, 1987, Mr. Freese filed a Note for
22 Motion, noting his Motion for Reconsideration and Motion
23 for Award of Attorney's Fees for June 15, 1987. Mr.
24 Freese specifically stated on the Note for Motion, "No
25 personal appearance." On the same date, Mr. Freese filed
26 a Notice of Presentation and Proposed Findings of Fact
and Conclusions of Law, noting the presentation for the

1 same date and time. On his Notice of Presentation he
2 made the indication, "Presentation by mail - there will
3 be no personal appearance unless the court orders
4 otherwise."

5 2.12 On June 11, 1987, Mr. Paxton, on behalf of Mr.
6 Oman, filed his own Motion for an Award of Attorney's
7 Fees, a responsive memorandum and his affidavit regarding
8 fees. Mr. Paxton did not note his motion for fees.

9 2.13 Also on June 11, 1987, Mr. Paxton sent a letter
10 to Respondent and Mr. Freese stating strenuous objection
11 to entry of written Findings and Conclusions, indicating
12 his belief that, pursuant to District Court Rules,
13 written Findings and Conclusions are not necessary and
14 requesting that, should the court decide to enter written
15 Findings and Conclusions, he wished to have the
16 opportunity to review the case further and present his
17 own Findings and Conclusions.

18 2.14 During the hearing which had previously been
19 held on May 4, 1987, there had been no discussion of
20 entry of written Findings and Conclusions of Law.
21 However, Mr. Freese was of the opinion that, even though
22 the Findings and Conclusions were to be presented on June
23 15, 1987, he still did not need to appear in court,
24 according to Respondent's prior directive. Respondent
25 hoped that the attorneys would appear for the hearing,
26 since disputed issues which he had not contemplated, most

1 specifically, the question of entry of written Findings
2 and Conclusions, were now before the court.

3 2.15 On June 15, 1987, neither Mr. Paxton nor Mr.
4 Freese appeared, the outstanding motions were not decided
5 by the court and no contact was made with either attorney
6 thereafter regarding the motions. An impasse developed
7 because Mr. Freese thought the matters would be decided
8 on the written materials; Respondent thought one of the
9 attorneys should renote the pending matters for argument.

10 2.16 On November 23, 1987, Mr. Freese wrote to
11 Respondent, noting that no decision had been made on the
12 Motion for Reconsideration and bringing the matter to the
13 court's attention because his client had been asking if
14 the case would be decided soon. (Exhibit 14). No
15 response was made to Mr. Freese's November 1987 letter.

16 2.17 On August 4, 1988, Mr. Freese again wrote to
17 Respondent indicating he had made several attempts to
18 communicate with the court during the past year to
19 determine the status of the decision on the case and
20 requesting that the court decide this matter as soon as
21 possible so that he could advise his client of the
22 decision. (Exhibit 15). No response was made to Mr.
23 Freese's August 1988 letter.

24 2.18 On November 1, 1988, Mr. Freese again wrote to
25 the court and stated, "I am at a loss as to what further
26 steps I can take to secure a decision or otherwise
expedite this matter. If there is any policy or other

1 reason why the matter is not being acted upon, I would
2 appreciate the court advising me." (Exhibit 16). No
3 response was made to Mr. Freese's November 1988 letter.

4 2.19 Mr. Freese, between November 1987 and November
5 1988, made several telephone calls to Respondent's staff
6 to ask when he could expect the decision and what he
7 could do to expedite the matter. At no time was Mr.
8 Freese told that he needed to renote the motion or take
9 any other action to have the matter heard.

10 2.20 On June 13, 1989, the Commission on Judicial
11 Conduct wrote to Respondent, informing him that a
12 complaint had been made with the Commission for his
13 failure to timely rule on the matters outstanding in the
14 Water Damage Restorers, Inc. v. Oman case and requesting
15 Respondent's reply.

16 2.21 After receiving Respondent's reply, on October
17 9, 1989, the Commission wrote to Respondent, indicating
18 that the Commission had determined that Respondent's
19 conduct was in violation of the Code of Judicial Conduct
20 for delay in entry of a decision.

21 2.22 On October 23, 1989, Respondent wrote to Mr.
22 Freese and Mr. Paxton, indicating reasons why the case
23 had not been decided and scheduling a hearing for
24 December 11, 1989, for oral argument regarding the
25 outstanding matters. The hearing was, in fact, heard on
26 December 11, 1989, and Mr. Freese and Mr. Oman were
notified of the court's decision on that date. The

1 written Findings of Fact submitted by Mr. Freese were
2 rejected as unnecessary and superfluous. The court
3 denied Mr. Freese's motion to grant a judgment on the
4 theory of quantum meruit. The court found both plaintiff
5 and defendant entitled to attorneys' fees, offset the
6 amounts and entered judgment on behalf of Mr. Freese's
7 client for \$275.00 for net attorney's fees.

8 2.23 After receiving Respondent's decision, Mr.
9 Freese's client appealed the decision.

10 2.24 Respondent contends that no action was taken on
11 the matter because neither counsel noted the matter for a
12 hearing which Respondent thought would be necessary to
13 resolve the matters outstanding at the May 4, 1987
14 hearing and the matters raised thereafter, i.e., Mr.
15 Paxton's request for attorney's fees and Mr. Freese's
16 request to have written Findings and Conclusions entered.

17 2.25 With respect to Mr. Freese's repeated requests
18 for direction, as evidenced by his letters and calls to
19 Respondent's staff, it is Respondent's contention that to
20 direct Mr. Freese to renote the motions or take some
21 other action would place Respondent in the position of
22 assisting one party to the litigation and that such
23 action would have cast Respondent in an adversarial role.

24 2.26 Respondent's contentions are not persuasive.
25 Apparently, neither counsel believed it was necessary to
26 appear for the June 15, 1987 hearing, because of the
court's indication on May 4, 1987 that it would not be

1 necessary for counsel to appear. There is no question
2 that additional issues were raised after the May 4, 1987
3 hearing, but it seems equally clear that neither counsel
4 believed those issues would require their appearance on
5 June 15, 1987.

6 2.27 The contention that Respondent could not or
7 should not communicate with Mr. Freese about how to
8 proceed with his case is equally unpersuasive when the
9 situation could have been resolved by the simple
10 expedient of directing the clerk to correspond with both
11 attorneys to the effect that, in light of the additional
12 issues, the court desired one or the other of the
13 attorneys to note all outstanding matters for hearing.
14 This had been done previously in this case when a
15 question arose about whether oral argument would be
16 necessary. See Exhibit 5.

17 2.28 Although the amount in controversy was modest,
18 it is clear that Mr. Freese's client intended to pursue
19 the matter and the inordinate delay in resolving the case
20 was detrimental, at least to Mr. Freese's client, if not
21 to Mr. Oman.

22 III.

23 CONCLUSION

24 3.1 Respondent failed to make a timely decision in
25 Water Damage Restorers v. Oman, as required by Civil
26 Rules for Courts of Limited Jurisdiction (CRLJ), Rule 58,
which states:

1 . . . "If the trial is by the judge, judgment
2 shall be entered immediately after the close of
the trial, unless he reserves his decision, in
3 which event the trial shall be continued to a
day certain, but not longer than 15 days.

4 3.2 Respondent's conduct in failing to enter a
5 timely decision as required by CRLJ 58 and failure to
6 respond to counsel's repeated inquiries is in violation
7 of Canon 3(A)(5) of the Code of Judicial Conduct, which
8 states:


9 Judges should dispose promptly of business of
the court.

10 IV.

11 RECOMMENDATION

12 It is the recommendation of the Master that the
13 Commission on Judicial Conduct admonish the Honorable
14 Eugene C. Anderson for violation of Canon 3(A)(5) of the
15 Code of Judicial Conduct.

16 DATED this 30th day of April, 1990.

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18 
19 MARY L. GAUDIO
20 Master
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