

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED
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In Re the Matter of)
)
Honorable John G. Burchard)
Okanogan Superior Court)
149 Third N, PO Box 112)
Okanogan, WA 99840-0112)
_____)

No. 94-1859-F-58

COMMISSION ON JUDICIAL CONDUCT

**STIPULATION AND ORDER
OF REPRIMAND**

The Commission on Judicial Conduct and the Honorable John G. Burchard, Judge of the Okanogan County Superior Court, do hereby stipulate and agree as provided for herein. This stipulation shall not become effective until approved by the Washington Commission on Judicial Conduct.

The Commission on Judicial Conduct is represented in these proceedings by its counsel, David Akana, and the Honorable John G. Burchard is represented by Gregory B. Curwen of GIERKE, CURWEN, METZLER & ERIE.

STIPULATED FACTS

1. The Honorable John G. Burchard, Respondent herein, has been the sole Judge of the Okanogan County Superior Court, Okanogan, Washington since January 11, 1993. In that capacity, he presided over hearings and trials at which he initiated or considered inappropriate ex parte and other communications concerning pending or impending proceedings, specifically:

* On or about October 26, 1994, Respondent had ex parte communications regarding State v. Opel, No. 94-1-00223-4. Respondent accepted a telephone call from the Coulee Dam Police Chief who discussed concerns about the case and the parties. In addition, Respondent telephoned an Okanogan District Court Judge and a Department of Corrections Officer. In these conversations, Respondent discussed previous court orders, verified previous court action, and discussed information about the case. Respondent disclosed these contacts on the record.¹ The case was dismissed upon prosecution motion on January 30, 1995.²

¹ Verbatim Report of Proceedings, October 26, 1994, pp. 19-21, 39:

THE COURT: I called Judge Culp this morning in Grant County. There a couple things I want to put on the record. I asked him what he was aware of as far as these previous hearings go. He told me that the complainant in this case lacked credibility. He has had two previous hearings with them; that in each instance he found that the violations that they claimed did not occur. (Inaudible) -- letter to the police. And then I asked him about the letter, and he confirmed that he had written the letter -- and sent it.

Later on in the morning I was called on the phone by Coulee Dam Police Chief Tom Edwards. Tom Edwards told me that he was very upset, that -- Mr. Armstrong is the name of the grandfather, I guess, has been harassing the defendant for a long time; that the defendant has not stalked anybody or done anything else inappropriate; that the victim's family are on a crusade against him and make up stories about him all the time.

He told me that the victim is not in danger, the defendant is not a danger to anyone; that he sees him, contacts him all the time; that he has a real obvious rig. He says he drives around town with two Dalmatians in his truck, and everybody in town knows where he is, and he has not been harassing anyone. That's what Tom Edwards says. He is the police chief. I didn't contact him; he called me.

I called Frank Osborne because I had some concerns about whatever happened to the violation that was alleged here about not entering sexual deviancy treatment. And I was concerned about that. And I don't see that that's ever been done. But for some reason it was not resolved. It was just kind of dropped. I don't see a resolution in the file anyway, and it's an area I am certainly concerned about, because I understand, as Ms. Lee has pointed out, that there was a requirement that he participate in some type of treatment program, and that hasn't occurred.

Now, Mr. Osborne is here, I see, and he has been supervising the defendant. And Mr. Osborne's statement to me was that the defendant has been one hundred percent cooperative, meets with him, goes out of his way, is doing basically what he is asked to do. And he stated that he felt that the defendant was -- that he

- * On January 23, 1995, Respondent initiated ex parte contact regarding State v. Simpson, No. 94-8-00364-3. Respondent telephoned defense counsel and communicated his thoughts and intentions concerning an upcoming commitment hearing. Respondent's intentions expressed to defense counsel included a reluctance to impose a suspended sentence, and the necessity to gather the support of the community and law enforcement. Immediately following the conversation, counsel filed an affidavit of prejudice against Respondent, who had not yet made a discretionary ruling and did not participate further in the case.
- * On the morning of May 26, 1995, during the trial of State v. Rise, No. 94-1-00257-9, Respondent had a private conversation with a Washington State Patrol Trooper, who was a witness for the State, outside the presence of the jury, regarding the Trooper's presentation of evidence and indicated that the witness should not mention these suggestions to the Deputy Prosecuting Attorney assigned to the case.³

found it hard to accept that the defendant was a danger to anyone. So I have been given all this information too I don't know if anybody has any more information about any of these issues or can address any of these.

....

THE COURT: Okay. Here's the conditions and here is my thinking. I think I have to give considerable weight to the fact that never before have I been called by a police officer so adamant about a situation. I know Tom Edwards. The best I know him is to be sort of a redneck police chief who wants law breakers in jail. Judge Culp's feelings were strong. Mr. Osborne's feelings are strong. . . .

² *State v. Opel*, supra, Motion and Affidavit of Order for Dismissal; Order of Dismissal. See attached.

³ Verbatim Report of Trial Proceedings, Motion for Mistrial, June 1, 1995. See attached.

Respondent explains that these suggestions did not concern the substance of the Trooper's testimony. Respondent recalls that the comments were made in a courtroom with other persons nearby, and that his statement not to mention his comments was made in jest.

A jury acquitted the defendant on June 2, 1995.

- * Prior to April 27, 1995, Respondent considered ex parte communications and made inappropriate comments concerning State v. Osier, No. 95-1-00033-7. Respondent met a police officer involved in the case in the courthouse hallway and brought up the subject of a proposed plea bargain that was scheduled but had not yet been presented. Respondent and the officer discussed the officer's dissatisfaction with the agreement and the underlying reasons for his opinion.

Respondent explains that when the officer expressed dissatisfaction with the plea agreement, he informed the officer that if he had concerns, he should contact the prosecutor's office, and reminded him of his right to attend the court hearing and make a statement in court.

Respondent also discussed this matter with the Prosecuting Attorney, prior to April 27, indicating that law enforcement did

not approve of the agreement, and that Respondent was not going to accept it when presented in court.

On April 27, 1995, when the plea agreement was scheduled to be presented, defense counsel asked for a continuance. Respondent rejected the plea agreement, ruling that it did not meet the interests of justice. On July 14, 1995, Respondent accepted a modified plea agreement. On August 28, 1995, Respondent recused himself from further action in the matter. On October 19, 1995, a visiting judge entered an order dismissing the case.⁴

AGREEMENT

2. Based upon the foregoing stipulated facts, Respondent agrees that while serving in his capacity as Judge of the Okanogan County Superior Court, he violated Canons 1, 2, and 3(A)(4) of the Code of Judicial Conduct.⁵

⁴ *State v. Osier*, supra, Order of Dismissal With Prejudice. See attached.

⁵ The Code of Judicial Conduct in effect prior to June 23, 1995 provides in relevant part:

CANON 1

Judges Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining, and enforcing, and should themselves observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this code should be construed and applied to further that objective.

3. Respondent agrees to accept a reprimand⁶ for the violations set forth above.

4. Respondent agrees that he shall exercise caution not to repeat such violations in the future and shall be mindful of the adverse effect such conduct may have upon the integrity, impartiality, and independence of the judiciary and public confidence therein.

CANON 2

Judges Should Avoid Impropriety and the Appearance of Impropriety in All Their Activities

(A) Judges should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) Judges should not allow their families, social, or other relationships to influence their judicial conduct or judgment. Judges should not lend the prestige of their office to advance the private interests of others; nor should judges convey or permit others to convey the impression that they are in a special position to influence them. Judges should not testify voluntarily as a character witness.

CANON 3

Judges Should Perform the Duties of Their Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. The judge's judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

(A) Adjudicative Responsibilities.

....

(4) Judges should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. Judges, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before them, by amicus curiae only, if they afford the parties reasonable opportunity to respond.

⁶ WAC 292-08-030(13) provides:

“Reprimand”, means a written action of the commission that requires a judge to appear personally before the commission, and that finds that the conduct of the judge is a minor violation of the code of judicial conduct and does not require censure or a formal recommendation to the Supreme Court that the judge be suspended or removed. A reprimand shall include a requirement that the judge follow a specified corrective course of action.

5. Respondent agrees that he will attend and participate in the course "Ethics for Judges," scheduled to commence in November, 1996, at the National Judicial College, Reno, Nevada. In the alternative, Respondent may substitute any other suitable educational offering pertinent to the violations set forth above, subject to the advance written approval of the Commission. Respondent shall certify his attendance to the Commission.

DATED this 1ST day of Dec, 1995.

David Akana

David Akana
Counsel for Commission on
Judicial Conduct

John G. Burchard
Honorable John G. Burchard


Gregory B. Curwen
Counsel for Respondent

12-1-95

ORDER OF REPRIMAND

Based upon the above Stipulation and Agreement, the Commission on Judicial Conduct hereby orders, and Respondent is hereby reprimanded, for the above set forth violations of the Code of Judicial Conduct. Respondent shall conform with the above agreement and shall desist from such conduct in the future.

DATED this 1st day of December, 1995.



Ruth Schroeder, Chair,
Commission on Judicial Conduct