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MAY 12 1997

BEFORE THE COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON

COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of )  
 )  
Justice Richard B. Sanders )  
Washington State Supreme Court )  
Temple of Justice )  
PO Box 40929 )  
Olympia, WA 98504-0929 )  
\_\_\_\_\_ )

No. 96-2173-F-63

**COMMISSION DECISION**

Following the filing of a Statement of Charges alleging that Justice Richard B. Sanders violated the Code of Judicial Conduct, the Commission held a fact-finding hearing on March 18 and March 19, 1997. Members of the Commission present as fact-finders were Dale Brighton, Vivian Caver, Harold D. Clarke III, Honorable H. Joseph Coleman, Honorable Susan A. Dubuisson (Presiding), Honorable William E. Howard, Connie Michener, Pamela T. Praeger and Todd Whitrock.

Justice Richard B. Sanders (Respondent) was present and represented by his attorney, Paul J. Lawrence of Preston, Gales and Ellis. Disciplinary Counsel were Don Marmaduke and Steven Wilker of Tonkon, Torp, Galen, Marmaduke and Booth.

The Commission has carefully considered the testimony of the witnesses, the exhibits admitted, arguments and briefs of counsel, and the amicus brief. Before entering the Findings, Conclusions, and Order, the Commission wishes to acknowledge that our system of selecting judges requires an informed electorate. Toward creating an informed electorate, judges may freely speak and express views on issues of interest to the public

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so long as the time, manner, and content of the remarks do not diminish public confidence in the integrity and impartiality of the judiciary.

The Commission interprets the Code of Judicial Conduct so as to encourage the public's ability to obtain information about the legal system and about individual judges. The Commission also recognizes that when a judge's right to free expression is implicated in an alleged ethical violation, the Code must be narrowly construed so as to limit the judge's behavior only to the extent necessary to preserve the integrity and independence of the judiciary. This decision is entered with full consideration of these rights and interests.

#### FINDINGS OF FACT

The Commission finds by clear, cogent and convincing evidence that:

1. On December 12, 1995, Respondent was sworn in as a justice of the Washington State Supreme Court. On January 26, 1996, a formal swearing-in occurred at the Temple of Justice in Olympia.

2. On January 26, 1996, Respondent was introduced at the Washington State March for Life at the Washington State Capitol in Olympia and made the following remarks:

Introduction: "I'm going to do something very different. Today, we had a Chief Justice of our State Supreme Court sworn in at 10:30. I would like now to introduce Justice Richard Sanders."

Respondent: "Well, I'm not quite Chief Justice, but I am a Justice. That's plenty good enough for me. I want to give all of you my best wishes in this celebration of human life. Nothing is, nor should be, more fundamental in our legal system than the preservation and protection of innocent human life. By coincidence, or perhaps by providence, my formal induction to the Washington State Supreme Court occurred about an hour ago. I owe my election to many of the people who are here today and I'm here to say thank

you very much and good luck. Our mutual pursuit of justice requires a lifetime of dedication and courage. Keep up the good work.”

3. Respondent did not appear at the March for Life rally as a result of an invitation to speak but arranged in advance on his own initiative to either appear personally or to have his statement read to those in attendance.

4. Respondent appeared at the event carrying a red rose, which he should have known to be a symbol of the pro-life movement.

5. The 1996 Washington State March for Life event was a political rally. Speakers urged those in attendance to work for the election of a pro-life governor and pro-life legislators. The enactment of pro-life legislation was also actively promoted.

6. Respondent failed to make adequate inquiry into the nature of the 1996 Washington State March for Life event. Unless the nature of the event and the activities planned for the event are known, prudence requires that a judge or justice make an inquiry in advance of the event to assure that a judge’s presence and participation does not violate the Canons. A minimal inquiry would have revealed that this event was a political rally.

7. At the time he addressed the March for Life event, Respondent was not a “candidate for election to judicial office” as that term is used in Canon 7.

8. All justices and judges in this state have the right to publicly express their views on controversial issues, so long as they do so within the standards of the Code of Judicial Conduct. Viewed in the context of this event, Respondent’s actions went beyond the mere expression of his opinion. By his presence, his act of carrying the pro-life symbol (a red rose), and his statements he aligned himself with a particular organization involved

in pursuing a political agenda. Respondent gave the appearance that he, a justice of the Washington State Supreme Court, supported the agenda advocated by March for Life. Respondent's statement was not in the context of explaining his role as a justice or responding to questions in the course of campaign activity authorized by Canon 7(A)(2); the statement was made during the course of a political rally wherein he spoke as a supporter of the cause. None of Respondent's colleagues who testified described their participation in any similar activity, nor did any of them suggest that such behavior by a judge or justice would be appropriate.

9. Respondent was not "singled out for sanction."

10. Respondent's participation in this event leads to the appearance of partiality on issues that may come before the Supreme Court in the future.

Having made its Findings of Fact, the Commission now makes the following conclusions:

### CONCLUSIONS

1. The Code of Judicial Conduct, adopted by the Supreme Court, is presumed to be constitutional. As interpreted, its provisions promote a compelling state interest in maintaining an independent and impartial judiciary, while respecting a judge's right to free expression. Respondent did not violate the Code by expressing an opinion. However, Respondent did violate the Code by the manner and in the context in which he made his statement.

2. Respondent violated Canon 1 by failing to personally observe high standards of judicial conduct and by diminishing public confidence in the judiciary.

3. Respondent violated Canon 2(B) by improperly lending the prestige of his office to a particular organization engaged in advancing the interest of one side of a political controversy.

4. Respondent violated Canon 7(A)(5) by engaging in political activity other than to improve the law, the legal system, or the administration of justice.

5. Respondent's acts were not within the scope of either Canon 4 or Canon 5.

6. Pursuant to Rule 6 CJCRP(C), the following mitigating factors were considered by the Commission before determining the appropriate discipline to be imposed:

- a. The misconduct appears to be an isolated incident.
- b. The misconduct occurred out of the courtroom.
- c. The justice had been on the bench little more than a month prior to the incident and had not previously served as either a judge or justice. The justice may not have had the opportunity to reflect upon the fact that his actions as a justice may have a more significant impact on public confidence in the legal system beyond that which he experienced as a private citizen and lawyer.
- d. There has been no prior public disciplinary action concerning the justice.
- e. The justice cooperated with the Commission investigation and proceeding.

7. Pursuant to Rule 6 CJCRP(C), the following aggravating factors were considered:

a. Although this was an isolated incident, Respondent's apparent failure to even consider the ramifications of the Canons on his behavior suggests the potential for repetition.

b. While Respondent was not acting in his official capacity, he was clearly identified as a justice of the Supreme Court prior to making his remarks.

c. The justice exploited his judicial position by lending the prestige of his judicial office to offer public support to an organization conducting a political rally.

From these conclusions, the Commission enters this

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ORDER

Based upon the foregoing Findings and Conclusions, the Commission finds that the Respondent has violated Canons 1, 2(B), and 7(A)(5). The Commission orders that the Respondent be REPRIMANDED. Further, Respondent is hereby ordered to complete the following course of corrective action:

1. Respondent shall attend and certify his attendance, within six months after this Order becomes final, a course in Judicial Ethics to be approved in advance by the Commission.

DATED this 12<sup>th</sup> day of May, 1997.

Dale Brighton  
Dale Brighton

William E. Howard  
Hon. William E. Howard

Vivian Caver  
Vivian Caver

Connie Michener  
Connie Michener

Harold D. Clarke, III  
Harold D. Clarke, III

Pamela T. Praeger  
Pamela T. Praeger

(See attached)  
Hon. H. Joseph Coleman

Todd Whitrock  
Todd Whitrock

Susan A. Dubuison  
Hon. Susan A. Dubuison