

1 **BEFORE THE COMMISSION ON JUDICIAL CONDUCT FILED**
2 **OF THE STATE OF WASHINGTON**

APR - 5 2004

3 COMMISSION ON JUDICIAL CONDUCT

4 In Re the Matter of)
5 The Honorable Richard B. Sanders,)
6 Justice, Washington Supreme Court)

No. 4072-F-109

STATEMENT OF CHARGES

7
8 **I. BACKGROUND**

9 The Honorable Justice Richard B. Sanders ("Respondent") is now, and was at
10 all times referred to in this document, a justice of the Washington Supreme Court. On
11 March 18, 2003, the Commission received a complaint against Respondent.
12 Investigation of the complaint resulted in the present charges.

13 On October 8, 2003, the Commission informed Respondent by letter that the
14 Commission was commencing initial proceedings against him. A Statement of
15 Allegations was enclosed and a response was invited. Respondent's response to the
16 Statement of Allegations was received on October 29, 2003. Based on the response,
17 the Commission staff engaged in further investigation, and Disciplinary Counsel
18 Katrina Pflaumer and Counsel for Respondent, Kurt Bulmer and John Strait, engaged
19 in discussions regarding possible resolutions.

20 At its executive session on the 2nd day of April, 2004, the Commission on
21 Judicial Conduct made a finding that probable cause exists to believe that the
22 Respondent violated Canons 1, 2, and 3(A)(4) of the Code of Judicial Conduct.

23 **II. CONDUCT GIVING RISE TO CHARGES**

24 Respondent is charged with violating Canons 1, 2, and 3(A)(4) of the Code of
25 Judicial Conduct by engaging in ex parte conversations with people with cases pending
26 or impending before the Washington Supreme Court. Respondent is also charged
27 with creating the appearance of impropriety in violation of CJC Canon 2.

28 On January 27, 2003, Respondent visited the Special Commitment Center on

1 McNeil Island, Washington, at the invitation of some of the residents. The Center is
2 a secure facility for people committed as sexually violent predators pursuant to
3 Chapter 71.09 RCW. The Commission on Judicial Conduct recognizes the
4 appropriateness of institutional visits by judges. These charges are not premised on
5 the mere fact of the visit, but on Respondent's inappropriate communications with and
6 acceptance of documents from residents of the Special Commitment Center.

7 Residents at the Center are a unique population of individuals unusually likely
8 to have cases pending in the appellate court system at all times. The residents heavily
9 litigate many aspects of their detention at the facility. At the time Respondent was
10 there, some residents had cases pending in the Washington Supreme Court or had
11 cases impending, in that their appeals were being processed in the state court system
12 and therefore likely to be reviewed by the Washington Supreme Court. For example,
13 the statute provides annual reviews by superior courts of each resident's continued
14 custody. The decisions in these cases are subject to review by the Supreme Court.

15 Respondent specifically anticipated discussions with residents at the facility, as
16 evidenced by his January 23, 2003 letter (attached hereto as Attachment A) to the
17 superintendent of the facility, in which he stated:

18 Of course one of the highlights of the tour will be contact and
19 discussions with any staff and residents who might desire it. Please
20 advise the residents that it is not my role to factually investigate
21 particular legal circumstances of any individual and that discussion of
22 same might be grounds to seek my recusal in any pending or future
23 proceeding. That would be my only ground rule and should any
24 discussion lead in that direction I will reiterate what I just said.

25 Despite Respondent's acknowledgment of the ethical boundaries inherent in his
26 proposed visit, he overstepped those boundaries. While at the Center, he conversed
27 with more than fifteen residents and initiated discussions on the topics at issue in the
28 pending and impending cases. Respondent asked residents individually to relate their
criminal histories and acts that led to their detentions, their treatment issues, and their
thoughts on the issue of volitional control over sexually violent behavior. Although
Respondent was originally scheduled to depart the facility on the 1:30 pm ferry, in

1 order to speak with more residents he remained longer and departed on a later ferry.

2 Respondent did not advise any counsel representing the State's interests in
3 commitment proceedings, nor counsel representing residents with pending or
4 impending cases, that he intended to have discussions with those residents, nor did
5 he advise any counsel after the fact that the discussions had taken place.

6 While at the Center, Respondent also accepted two documents from residents
7 who had cases pending in the appellate court system. Respondent did not provide any
8 counsel involved in those cases with information about or access to these documents
9 until requested by an assistant attorney general to do so.

10 Respondent's communications with residents about matters related to their
11 pending or impending cases without notice to or consent from their counsel or of
12 counsel for the State constituted inappropriate ex parte communications concerning
13 pending or impending proceedings, and created the appearance of bias favoring
14 particular parties in those proceedings.

15 **III. BASIS FOR COMMISSION ACTION**

16 On April 2, 2004, the Commission determined that probable cause exists to
17 believe that Respondent has violated Canons 1, 2, and 3(A)(4) of the Code of Judicial
18 Conduct (CJC). These sections of the Code state:

19 **CANON 1**

20 **Judges shall uphold the integrity and
21 independence of the judiciary.**

22 An independent and honorable judiciary is indispensable to justice
23 in our society. Judges should participate in establishing, maintaining and
24 enforcing high standards of judicial conduct, and shall personally
observe those standards so that the integrity and independence of the
judiciary will be preserved. The provisions of this Code are to be
construed and applied to further that objective.

25 ***Comment***

26 *Deference to the judgments and rulings of courts depends upon public confidence in the*
27 *integrity and independence of judges. The integrity and independence of judges depends in turn upon*
28 *their acting without fear or favor. Although judges should be independent, they must comply with*
the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary
is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code

1 *diminishes public confidence in the judiciary and thereby does injury to the system of government*
2 *under law.*

3 **CANON 2**

4 **Judges should avoid impropriety and the appearance of impropriety** 5 **in all their activities.**

6 **(A)** Judges should respect and comply with the law and should
7 act at all times in a manner that promotes public confidence in the
8 integrity and impartiality of the judiciary.

9 **(B)** Judges should not allow family, social, or other
10 relationships to influence their judicial conduct or judgment. Judges
11 should not lend the prestige of judicial office to advance the private
12 interests of the judge or others; nor should judges convey or permit
13 others to convey the impression that they are in a special position to
14 influence them. Judges should not testify voluntarily as character
15 witnesses.

16 *Comment*

17 *Maintaining the prestige of judicial office is essential to a system of government in which the*
18 *judiciary functions independently of the executive and legislative branches. Respect for the judicial*
19 *office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish*
20 *between proper and improper use of the prestige of office in all of their activities.*

21 *The testimony of judges as character witnesses injects the prestige of their office into the*
22 *proceeding in which they testify and may be misunderstood to be an official testimonial. This canon*
23 *however, does not afford judges a privilege against testifying in response to a subpoena.*

24 **CANON 3**

25 **Judges shall perform the duties of their office** 26 **impartially and diligently.**

27 **(A) Adjudicative Responsibilities.**

28 . . .

(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.

29 *Comment*

30 *The proscription against communications concerning a proceeding includes communications*
31 *from lawyers, law teachers, and other persons who are not participants in the proceeding, except*
32 *to the limited extent permitted. It does not preclude judges from consulting with other judges, or*
33 *with court personnel whose function is to aid judges in carrying out their adjudicative*
34 *responsibilities.*

THE SUPREME COURT
STATE OF WASHINGTON

RICHARD B. SANDERS
JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 60029
OLYMPIA, WASHINGTON
98506-0029



January 23, 2003

Via Facsimile Transmission

Mark J. Seling, Ph.D., Superintendent
McNeil Island Special Commitment Center
P.O. Box 88450
Steilacoom, WA 98388

Dear Dr. Seling:

Thank you very much for arranging this tour.

Of course one of the highlights of the tour will be contact and discussions with any staff and residents who might desire it. Please advise the residents that it is not my role to factually investigate particular legal circumstances of any individual and that discussion of same might be grounds to seek my recusal in any pending or future proceeding. That would be my only ground rule and should any discussion lead in that direction I will reiterate what I just said.

I look forward to touring the physical facilities so as to better understand the residential life, daily routine and treatment program in place and contemplated for the future. I would welcome comments from a variety of staff and residents, including the resident advocate and ombudsman if available.

I view this tour in the same sense as any prison tour, an opportunity for myself and other tour participants to gain a better understanding and

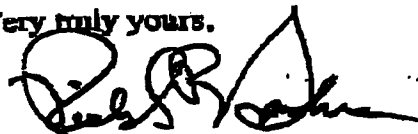
Dr. Mark Selig
January 23, 2003
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appreciation of the facility and how it works. I anticipate, and hope, to be exposed to the views of a wide variety of individuals.

Although I have received correspondence from some of the residents regarding the upcoming tour, that correspondence was neither solicited nor responded to, although I do agree with its general tenor that the SCC is an important state institution which should be recognized and understood. If there are any particular legal problems, however, they must be dealt with fairly and impartially in the context of appropriate litigation upon which this tour shall and must have no influence whatsoever.

With this in mind, I and the others who accompany me look forward very much to the scheduled tour and are confident it will have a positive effect on all concerned. I have no objection if you share this letter with staff and residents as you see fit.

Very truly yours,



Richard B. Sanders

cc: Alexander, C.J.