

HOUSE BILL REPORT

SSCR 8406

As Passed House - Amended:

April 16, 1999

Brief Description: Resolving to determine whether or not the legislature should commence proceedings to remove Judge Grant Anderson from office.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Snyder, McCaslin, Franklin and Goings).

Brief History:

Committee Activity:

Judiciary: 3/18/99, 4/1/99 [DPA].

Floor Activity:

Passed House - Amended: 4/16/99, 97-0.

Brief Summary of Substitute Concurrent Resolution (As Amended by House Committee)

- The House and Senate Committees on Judiciary are directed to review the Washington State Supreme Court's pending decision in the matter of the discipline of Superior Court Judge Grant Anderson.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

Staff: Bill Perry (786-7123).

Background:

On April 3, 1998, the Commission on Judicial Conduct recommended to the state supreme court that Pierce County Superior Court Judge Grant Anderson be suspended from office for a period of four months. The commission also censured the judge and ordered him to attend a course in judicial ethics and to amend his elected official's

filings with the Public Disclosure Commission. The recommendations of the Commission on Judicial Conduct were heard by the supreme court on February 9, 1999. The authority for this action by the commission and by the supreme court is found in Article IV, Section 31 of the state constitution.

Another provision of the state constitution, Article IV, Section 9, allows the Legislature to remove a judge by a three-fourths majority vote in each house.

Article IV, Section 31 - Commission on Judicial Conduct

The Constitutional Provision. Under Article IV, Section 31, the Commission on Judicial Conduct may investigate, hear, and decide issues related to a judge's alleged violation of the Code of Judicial Conduct. The Code of Judicial Conduct is a set of rules adopted by the state supreme court that establishes certain standards for judges. These standards consist of broad statements, called canons, followed by somewhat more elaborate descriptions or examples of required or prohibited behavior. There are seven canons in the Code of Judicial Conduct:

- Canon 1: *Judges shall uphold the integrity and independence of the judiciary.*
- Canon 2: *Judges should avoid impropriety and the appearance of impropriety in all their activities.*
- Canon 3: *Judges shall perform the duties of their office impartially and diligently.*
- Canon 4: *Judges may engage in activities to improve the law, the legal system and the administration of justice.*
- Canon 5: *Judges shall regulate their extrajudicial activities to minimize the risk of conflict with their judicial duties.*
- Canon 6: *Judges shall regularly file reports of compensation received for quasi-judicial and extra-judicial activities.*
- Canon 7: *Judges shall refrain from political activity inappropriate to their judicial office.*

The Commission on Judicial Conduct may admonish, reprimand, or censure a judge, after which the judge has a right of appeal to the supreme court. The commission may also recommend to the supreme court that a judge be suspended, removed, or forced to retire. Under Article IV, Section 31, only the supreme court may suspend, remove, or retire a judge, and the supreme court may take these actions only upon the recommendation of the commission. It is an open question as to whether the supreme court may exceed the recommendations of the commission in imposing sanctions on a

judge, for instance by removing a judge when the commission has recommended suspension. To date, none of the court's actions appears to have increased the severity of a recommended sanction.

The Judge Anderson Case. On August 1, 1997, after an investigation and an initial proceeding by the Commission on Judicial Conduct, Judge Anderson was charged with seven violations of the Code of Judicial Conduct. On April 3, 1998, the commission found the judge to have committed three of those charged violations.

All of the charges and findings stemmed from the judge's involvement as the personal representative of an estate and as trustee of a trust arising out of that estate. Most of the transactions in question occurred roughly in the period from August 1992 through October 1993. Judge Anderson was first elected to the superior court in September 1992 and took office January 8, 1993.

Specifically, the commission decided that Judge Anderson:

- violated Canons 1 and 5 by continuing to serve as the president of two corporations after becoming a judge.
- violated Canons 1 and 2 by accepting an offer from a friend to make the judge's \$30,000 car loan payments during the same time that the judge was negotiating a reduction of \$92,000 in the price to be paid by that same friend for the purchase of a bowling alley business. The business was being sold by a corporation for which the judge still served as the president. The business was also part of the trust for which the judge had been the trustee, and the judge failed to disclose to the new trustee, his former law partner, that he was receiving the car payments from the purchaser of the business.
- violated Canons 1 and 6 by failing to report the car payments as compensation on the judge's public disclosure forms for three years.

For these violations, the commission recommended to the supreme court that the judge be suspended without pay for four months. The commission also censured the judge and imposed corrective action directing him to attend a course on judicial ethics and requiring him to amend his public disclosure filings. The eight-member panel of the commission that heard the case agreed unanimously on the censure of the judge and on the recommendation of four months' suspension. However, two of the members disagreed with the characterization of the car payments as "compensation" and therefore would not have required the judge to adjust his public disclosure filings.

The case is currently in the state supreme court where a hearing was held on February 9, 1999. The findings and decision of the Commission on Judicial Conduct

are being reviewed "de novo" by the court. The court has said in its most recent judicial discipline case that de novo review means not that the court will hold a new evidentiary hearing or that the court is free to build a new factual record, but rather that the court will give "considerable weight" to the findings of the commission and "serious consideration" to the recommended sanctions. (In re Discipline of Turco, Slip Op. January 28, 1999, pages 22-24.)

Article IV, Section 9 - Legislative Removal

The Constitutional Provision. Article IV, Section 9, of the state constitution allows the Legislature to remove certain elected officials, including superior court judges, from office. This method of legislative removal is different from impeachment which is provided for in Article V, Section 2, and also could apply to a superior court judge.

The contents of Article IV, Section 9, are brief:

- The grounds for removal are "incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause."
- The grounds must be stated in a joint resolution.
- The officer to be removed must be "served with a copy of the charges" and must be given "an opportunity to be heard in his defense."
- Removal requires a vote in favor of the joint resolution by three-fourths of the members elected to each house of the Legislature.

There are no statutes or rules implementing this procedure, and there is no case law construing it. The Legislature considered a joint resolution to remove a judge in 1891, but it failed to get the required votes.

Attempt to Remove Judge Sachs in 1891. The only attempt by the Legislature to remove a judge under Article IV, Section 9, occurred in 1891. Morris B. Sachs was at that time a superior court judge on the Kitsap and Olympic peninsulas.

The joint resolution of removal charged Judge Sachs with eight counts of "misbehavior, malfeasance and delinquency in office." These charges included gambling, consorting with common gamblers, failure to pay debts, improperly pressuring a sheriff and others to avoid the payment of debts, and using his position as a judge to enter a judgment in favor of a relative.

The consideration of the Judge Sachs case by the Legislature began with the February 1, 1891, filing of a citizens' petition to impeach, and ended with a March 5, 1891,

vote in the Senate. Legislative activity included creating special committees, adopting procedural rules, and holding committee hearings and joint full House and Senate hearings. A brief outline of events follows:

- February 1 - Petition received by the House;
- February 6 - House Special Committee created to investigate charges;
- February 7 - House Special Committee requests additional investigative and expenditure authority;
- February 12 - House Special Committee reports after two days of testimony from 26 witnesses;
- February 12 - Report of House Special Committee referred to House Judiciary Committee;
- February 17 - House Judiciary Committee recommends removal;
- February 17 - House Concurrent Resolution adopted creating a Joint Committee on Procedures;
- February 18 - House Concurrent Resolution adopted creating a Joint Committee on Removal;
- February 18 - Senate concurs in resolutions creating joint committees;
- February 20 - Rules of procedure adopted;
- February 20 - Report from Joint Committee on Removal received and adopted;
- February 21 - House Resolution adopted directing service of charges on Judge Sachs;
- February 23 - House Concurrent Resolution adopted to appoint removal managers;
- February 23 - Senate concurs and appoints removal managers;
- February 24 - House Resolution adopted authorizing Speaker to subpoena witnesses;
- February 24 through March 4 - Joint House and Senate evening hearings on removal;

- March 4 - Removal resolution passes in House on a vote of 62-14;
- March 5 - Removal resolution fails in Senate on a vote of 16-16.

Summary of Amended Substitute Concurrent Resolution:

The House and Senate Committees on Judiciary are directed to review the decision of the Washington State Supreme Court, when it is released, in the matter of the discipline of Judge Anderson.

The resolution makes specific declarations, including:

- that the Commission on Judicial Conduct found that Judge Anderson violated several canons of ethics;
- that the recommendation of the commission to suspend Judge Anderson for four months is currently under review by the supreme court;
- that the supreme court has the authority to adopt the recommendations of the commission, to adopt other sanctions, or to remove Judge Anderson from office;
- that the Legislature should withhold any decision about legislative removal until the current process has had a reasonable opportunity to run its course; and
- that the Judiciary Committees, jointly or individually, are to schedule a meeting within two weeks of the release of the supreme court's decision, or no later than December 10, 1999, to review the matter of Judge Anderson.

Appropriation: None.

Fiscal Note: Not requested.

Testimony For: Citizens have been robbed of more than a million dollars. Judge Anderson specifically told the beneficiaries of the estate that they could trust him to get the best possible price for the assets of the trust. The judiciary is not capable of cleaning its own house. The judicial discipline system does not work. Even within the separation of powers doctrine, the Legislature has a duty to exercise its constitutional authority under Article IV, Section 9, of the state constitution. The Commission on Judicial Conduct is understaffed and underfunded and simply incapable of adequately investigating and handling cases. Passage of the resolution is just common sense, and the Legislature today need not feel bound by the procedures used in 1891. A streamlined procedure would afford adequate due process.

Testimony Against: The Legislature should allow the court to conclude its process. The whole reason for the Commission on Judicial Conduct was to provide a method of judicial discipline because the Legislature never removed any judges. The vast majority of commission cases are resolved by stipulation, and judges will be reluctant to agree to punishment if they fear that the Legislature may intervene with a removal proceeding. There are substantial questions about how the Legislature should proceed. It might make more sense for the Legislature to investigate how the commission is working and whether a constitutional amendment or more funding for the commission is needed.

Testified: (In support) Donald Barovic and Mark Bennett, Advocates for Legal System Overhaul; Pamela Ott, Ocean Beach Hospital; Douglas Schafer, Schafer Law Firm; and F.E. McMullen, Pacific County Hospital District.

(Neutral) Chief Justice James Andersen (retired).

(Opposed) John Strait, Seattle University Law School.