

June 16, 2011

The American Judicature Society Center for Judicial Ethics will hold its **22nd National College on Judicial Conduct and Ethics** on October 26-28, 2011 in Chicago. Registrations paid before August 26 is \$325. Colorado CLE credit will be available. Information is available at [www.ajudsociety.org](#). Session topics include:

- Judicial Disqualification: Reasonable People Discuss Impartiality.
- Appearance of Impropriety
- Big Money and Judicial Elections
- Determining the Appropriate Sanction
- Judges' Personal Relationships: On-Line and Face-to-Face
- Judicial Ethics in Problem-Solving Courts
- Investigating "Judge Judy:" A Judicial Discipline Case Study
- The Line Between Legal Error and Judicial Misconduct

Iowa House Speaker Kraig Paulsen ... quashed an effort by Republican House members to impeach four justices of the Iowa Supreme Court. Five Republican lawmakers had filed resolutions in the House on Thursday with the intent of impeaching four Iowa Supreme Court justices who had issued an April 2009 ruling legalizing same-sex marriage. The resolutions represented an effort to remove the remaining justices who took part in the case. Opponents of the ruling spearheaded a successful campaign to oust the three other justices in their November 2010 retention elections. (Des Moines Register, Apr 22, 2011, by William Petroski).

The **Washington State Commission on Judicial Conduct** has admonished former judge Jerry Votendahl for, while still a judge, expressing his support for a candidate for sheriff in a letter to the editor. (April 22, 2011)

The investigative panel of the **Florida Judicial Qualifications Commission** filed a notice of formal charges alleging that Judge William Singbush (1) was habitually late for court and, when hearings could not be concluded in the time allotted, sarcastically stated that he was "here to serve" and offered to resume the hearing at inconvenient dates and times, such as Friday afternoon at 5 p.m. or Saturday morning; (2) compounded his tardiness by the length and number of his smoke breaks; and (3) when assigned weekend first appearance duty at the jail, which was scheduled to begin at 9:00 a.m., generally failed to appear until 11:00 a.m., took long lunch breaks, and sometimes finished as late as 8:00 p.m.

The **Oklahoma** governor signed a bill that adds \$2 to the fee for filing certain civil case, including divorce, probate, guardianship, adoption, and garnishment, to fund the **Oklahoma Council on Judicial Complaints**.

Protect Marriage, the sponsor of the **California** ban on gay marriage, has asked the U.S. Court of Appeals for the 9th Circuit to vacate Judge Vaughn Walker's decision declaring Proposition 8 to be unconstitutional because the judge failed to disclose that he was in a long-term relationship with another man. The group said it was not suggesting that it would be inappropriate for any gay or lesbian judge to sit on the case but argued, "Judge Walker's 10-year-long same-sex relationship creates the unavoidable impression that he was not the impartial judge the law requires," and "no judge is permitted to try a case where he has an interest in the outcome."

The **Florida Senate** on Monday threw out most of a proposed court-system overhaul that came from the House, removing the biggest change — a division of the state Supreme Court into separate divisions for civil and criminal appeals. . . . Critics had called the split-court part of the plan "court packing," saying Republican Gov. Rick Scott would get to fill the new civil bench with his picks. They said GOP-friendly jurists would sway important business and social-policy cases ending up in the civil division, including any political redistricting challenges.

After much talk about the Founding Fathers, separation of powers, and the Federalist Papers, senators approved the changed bill (HJR 7111) by a vote of 28-11 and sent it back to the House. . . . "To put something like [the approved bill] on the ballot is a waste of time and money," said former Supreme Court Justice Raoul Cantero, who had opposed the House plan. "But it doesn't have the grave consequence to judicial independence that the court-packing plan did." The Associated Press, May 3, 2011.

The **Louisiana Supreme Court** suspended Justice of the Peace Roger Adams for one year without pay and two years of probation, for signing a judgment of divorce. During his visit to a jail to perform his notary public duties, an inmate asked him to sign her divorce judgment. Although a justice of the peace has no jurisdiction to do so, the judge signed the divorce judgment, receiving a \$10 "notary fee." The judgment had no case number, and the judge did not determine whether the inmate was legally entitled to a divorce, verify service of what was clearly a default judgment, determine that her husband was actually in default, or hold any hearing. The judge is not a lawyer but has been a justice of the peace for 13 years. In 2007, the Court suspended him without pay for 15 days for issuing arrest warrants for 2 individuals for a parade permit violation and setting excessively high bonds in retaliation for the individuals' political opposition to the mayor.

By a vote of 10-8, the **Judicial Council of the U.S. Court of Appeals for the 6th Circuit** dismissed a complaint that Bankruptcy Judge George Paine II committed misconduct by belonging to a country club that has no women or African-American regular members. According to news reports, the complainant is considering an appeal to the U.S. Judicial Conference. Judge Paine joined the country club in 1978. He wrote a letter to the club asking it to increase the diversity of its membership around 1995. He has sponsored several African-American men for membership; the Club has not acted for 5 years on the most recent application sponsored by the judge.

The code of conduct for U.S. judges provides that "when a judge determines that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canons 2 and 2A, the judge is permitted, in lieu of resigning, to make immediate and continuous efforts to have the organization discontinue its invidiously discriminatory practices. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the judge's first learning of the practices), the judge should resign immediately from the organization."

The **New Mexico Supreme Court** suspended Judge Mike Murphy without pay after a state grand jury indicted him on 4 felony counts of demanding or receiving a bribe by a public officer or public employee, bribery of a public officer or public employee, bribery or intimidation or retaliation of a witness, and criminal solicitation. In April, 2011, the supreme court denied a previous petition by the Commission to suspend Murphy after the grand jury investigation became public.

Murphy allegedly gave \$4,000 to get appointed to the bench by then-Governor Bill Richardson and told several people that other potential judicial appointees had to give money as well. So far, only Murphy has been charged or received notice that a grand jury will consider indicting them.

The investigative panel of the **Florida Judicial Qualifications Commission** filed a notice of formal charges against Court of Appeal Paul Hawkes for "a pattern of conduct that can only be characterized as intemperate, impatient, undignified and discourteous," including "willingness to circumvent policy practice and people to gain [his] objectives without regard to the propriety of the means employed [that] demonstrates an inability to distinguish between the proper and improper use of the prestige of [the] judicial office." Several, but not all of the charges, relate to the judge's role in the construction of a \$50 million courthouse that has been dubbed the "Taj Mahal" and for which there have been calls for his impeachment.

The **Indiana Commission on Judicial Qualifications** filed a notice of institution of formal proceedings and statement of charges against Judge William Hughes based on his guilty plea to charges of reckless driving in North Carolina. He had originally been charged with driving while intoxicated.

The **Arizona Supreme Court** censured former judge Theodore Abrams for hearing cases involving an attorney with whom he had an intimate relationship, unwanted conduct of a sexual nature against an assistant public defender and retaliating against her when she rejected his advances, and sending e-mails of a sexual nature to a third attorney. The judge began an intimate consensual relationship with attorney A in June 2008. The sexual contact continued for a few months, and they had a close personal relationship through April 2009. Attorney A appeared before the judge on multiple occasions as a private, criminal defense attorney.

Attorney A introduced the judge to Attorney B, an assistant public defender. Attorney B was assigned to the judge's courtroom beginning in August 2009. Between November 2009 and October 2010, the judge left Attorney B at least 28 voicemails and sent her at least 85 text messages with personal and often sexual content. At least 3 voicemails messages contained non-substantive references to cases that had come before the judge. In December 2009 and in May 2010, Attorney B sent at least 9 text messages explicitly rejecting his advances. The judge alleges that Attorney B also sent him many messages that were friendly and responded to his comments without explicitly or implicitly rejecting his advances.

In 2010, after the **Nebraska Supreme Court** removed Judge Kent Florum for interfering in a criminal case against a **softball coach** and a juvenile case involving a softball player, Judge John Murphy sent a letter to an attorney who was one of the witnesses against Judge Florum, stating, "Because I hold you personally responsible for the Florum fiasco, I am recusing myself from any pending case or any future case involving your law firm." The Nebraska Supreme Court reversed a summary judgment entered by Judge Murphy against a party represented by the attorney, finding that the judge should have disqualified himself. The Court held:

"By Judge Murphy's own admission, the so-called Florum fiasco caused him to have a personal bias against the Tierneys' attorney. While Judge Murphy did not announce his bias until after Florum was removed from judicial office, a reasonable observer would conclude that this same bias was present when Judge Murphy decided the parties' cross-motions for summary judgment. At the time of the summary judgment hearing, the disciplinary proceedings against Florum were well underway. [The attorney] had already testified before the special master, and the Judicial Qualifications Commission had already recommended removal. A reasonable observer would find it unlikely that Judge Murphy was ignorant of the ongoing disciplinary proceedings against his colleague. And a reasonable observer would conclude that Judge Murphy's bias against the Tierneys' attorney was not formed suddenly at the moment Florum was dismissed from judicial office. Judge Murphy should have recused himself from deciding the motions for summary judgment."

The Court held that the harmless error analysis was inappropriate for review of questions of judicial disqualification," stating "any attempt to determine or ameliorate actual prejudice through a traditional harmless error analysis would undermine the high function of the judicial process that the ethical canons are designed to protect."

Tierney v. v. Four H Land Co. (June 3, 2011).

During the sentencing of a 71-year-old former school bus driver who had pleaded no contest to sexual assault of children, **Wisconsin** Judge Philip Kirk stated, "I think you were born gayer than a sweet smelling jock strap," and "I think that if anyone believes that in the last 10 years or 15 years all of a sudden you developed an interest in homosexuality and young boys, then I must have looked ravishing in my prom dress this year." A **YouTube** video of the sentencing hearing has had tens of thousands of views.

Gay advocacy blogs and web-sites criticized the judge for linking homosexuality with the defendant's crimes against children.

The **South Carolina Supreme Court** publicly reprimanded former judge James Hughes for making an inappropriate comment to a law student at a county bar reception and having an inappropriate image on

his cell phone that was viewed by the law student and others at the reception. The Court noted that, because the judge no longer holds judicial office, a public reprimand is the most severe sanction it can impose. (May 31, 2011).

The **New Mexico Supreme Court** ordered that Judge Robert Schwartz be formally reprimanded and fined \$6,000 for initiating a romantic relationship with an assistant public defender assigned to his courtroom and failing to immediately disqualify himself from her cases; the court also ordered that the judge take a course in sexual harassment. Noting it was “not suggesting that a judge is prohibited from becoming romantically involved with an attorney,” the Court held that “before initiating such a relationship the judge must terminate any professional relationship by recusing from any cases in which an attorney is or has been involved.”

Noting that a judge’s impartiality will not normally be questioned merely because a judge has a social relationship with an attorney, the Court held that, when a “relationship becomes something more than casual social interaction, and involves sexual jokes and the desire for a romantic relationship, then it raises reasonable questions about the judge’s ability to be impartiality.” Acknowledging that no allegations of sexual harassment had been made and the judge was not the assistant public defender’s supervisor, the Court concluded that he “was in a position of considerable authority, having power to rule in cases the assistant public defender argued before him.” The Court also noted that the judge failed to recuse in a timely manner from the assistant public defender’s cases, made ruling in some cases after announcing his intention to recuse, and gave reasons for his eventual recusal that were not credible. (May 31, 2011)

The investigative panel of the **Florida Judicial Qualifications Commission** recommended that Judge Timothy Shea be publicly reprimanded for a pattern of rude and intemperate behavior. The judge stated that his conduct was unintentional, apologized after being made aware how his conduct was being perceived, and took affirmative action to avoid such behavior; no further instances were reported after the judge received a notice of the investigation. Judge Shea characterized his conduct as resulting from his “Irish temper.” (June 1, 2011).