

March 1, 2012

The **New Jersey Supreme Court** publicly reprimanded Judge Gregory McCloskey for an ex parte communication directing a prosecutor in to ask state witnesses certain questions and for failing to disqualify himself from the case. According to the 'presentment' filed with the **Advisory Committee on Judicial Conduct**, At the end of the second day of the trial, during an ex parte conversation, the judge directed the municipal prosecutor to ask state witnesses certain questions concerning issues relevant to the state's case and critical to the defense. The defendant was convicted of driving under the influence and refusing to submit to an Alcotest. (Feb. 24, 2012). www.judiciary.state.nj.us/pressrel/2012/pr120224a.htm

Going on vacation?

The **Tennessee Court of the Judiciary** publicly reprimanded Judge John Bell for, while on military duty in Germany, allowing an unauthorized individual to sit as a substitute judge and setting bonds by e-mail. In July 2003, the Tennessee Supreme Court entered a standing order specifically naming judges to be used as substitute judges during Judge Bell's military service. While in Germany, he allowed an individual not authorized by the standing order to sit as a substitute. He also gave instructions that he would continue to set bonds in DUI cases by receiving information by e-mail and notifying jail personnel by e-mail of the bonds to be set, which caused delay in the setting of bonds in some cases. The judge admitted that his attempt to set bonds by e-mail while in Germany was inappropriate. (Feb. 27, 2012).

The **California Commission on Judicial Performance** instituted formal proceedings alleging that Judge Salvador Sarmiento sought preferential treatment from a court traffic commissioner in the handling of a traffic ticket issued to the judge's wife; the judge visited the commissioner in her chambers twice on the same day to ask the commissioner to vacate a \$300 civil assessment issued because the judge's wife had failed to meet the pay-or-appear date; or at least set a trial date.

The **Arizona Commission on Judicial Conduct** publicly reprimanded Judge Michael Pollard for asking two other judges about a case on behalf of family friends. The Commission stated, "although the judge assured his friends that he had no authority to change the decision previously made, his inquiries may have led the complainant to believe he could, in fact, impact the outcome of the underlying case."

From the Judicial Ethics Forum:

Bigger Judges Attacking Littler Judges

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We rarely see the use of one very scary weapon to keep a trial judge in line — indirect criminal contempt. The **Supreme Court of the United States Virgin Islands**, however, recently used it.

After a trial judge refused to follow the supreme court's mandate, criticized the accompanying opinion, and recused himself from the case, the supreme court

ordered a show cause hearing. Even though the special master who then presided over that hearing recommended that the trial judge be acquitted on all counts, the supreme court — i.e., the same court that was repeatedly criticized by the trial judge in his allegedly offensive recusal order — disagreed, found him in contempt, and set a sentencing date. Although the trial judge's recusal order did contain overly critical language, the supreme court's acts are questionable as a matter of due process, see *Mayberry v. Pennsylvania*, 400 U. S. 455, 465-66 (1971), and dangerous to decisional judicial independence (insofar as much of the supreme court's decision is based on the language in the trial judge's published order; contempt decisions involving only the act of failing to follow a superior court's clear order are obviously less problematic).

Perhaps the justices should have recused themselves, or at a minimum, given the judge one warning. Hopefully, this weapon will continue to be a rarity.

In **Nevada**, Judge Daniel Bauer has resigned after being charged with wrongful exercise of official power and oppression under color of office for his conduct toward a teenage driver. In September 2011, a teenager on her way to school crossed over a yellow line while attempting a left-hand turn. The teenager told a television station that Bauer, who was in a sports car in front of her, then showed her a badge, said he was a police officer, had her pull over, took her driver's license, told her she was under arrest, and had her follow him. At a gas station, Bauer showed her his judicial identification and said that she would not win if she took the case to court.

The **Washington State Commission on Judicial Conduct** filed a statement of charges alleging that Judge John Wulle failed to maintain order and decorum in proceedings over which he presided and engaged in a pattern or practice of discourteous, impatient, and undignified behavior. According to news reports, during a sentencing in a high-profile murder case, Judge Wulle shouted to the defendant to "shut your damn mouth" and told him he could have him gagged.

A bill introduced into the **Maryland** legislature would amend the state's constitution to give the **Commission on Judicial Disabilities** the authority to remove from office judges who refused to enforce, rendered a decision or order contrary to, or knowingly disregarded applicable law, court rules, or provisions of the state or United States constitutions. Under the proposed amendment, if the Commission finds a judge engaged in the described conduct, the judge would be removed from office and forfeit his or her pension and "any rights and privileges," possibly including judicial immunity. Litigants could file complaints even while their case is still pending

A bill introduced into the **Mississippi** legislature would amend the constitution to provide that any judge who deprives a person of his constitutional or civil rights, abuses or exceeds the authority of his office, does not maintain proper decorum in the courtroom, or engages in unethical conduct is to be criminally prosecuted. Conviction of a first offense means a \$5,000 fine and a suspension of the judge's law license for 90 days; second or subsequent convictions would result in suspension of the judge's law license for 1 year

According to media reports, The **Alabama Judicial Inquiry Commission** has informed a complainant that it dismissed her complaints alleging Judge Ben Fuller and Judge Louis Colley committed misconduct by participating in a football pool.

“Because of ties to the University of Minnesota -- the state's largest university and law school -- three of the **[Minnesota Supreme] Court's** seven justices have opted not to hear a nearly five-year-old case involving the U of M's basketball program that has wound its way to the state's high court for a final decision. But three of the four remaining justices, including a specially appointed replacement, also have ties to the U.” (*Grand Forks Herald*, Feb. 20, 2012)

Chief Justice John Roberts told a group of Democratic senators that the U.S. Supreme Court is not going to formally adopt the code of judicial conduct that applies to other federal judges.

From The Augusta Chronicle, Feb. 25, 2012:

“A north **Georgia** chief judge pulled out a handgun in open court and pretended to offer the pistol to an uncooperative witness, telling the woman she was “killing her case,” the prosecutor who witnessed the exchange said Saturday. . . . [Deputy District Attorney Jeff] Langley, added [that] he immediately approached the bench and told the judge to put the gun away. Barrett complied, he said, and the hearing continued. The prosecutor said Barrett told the woman she was “killing her case.” Langley said the judge then pulled out his gun and said, “You might as well shoot your lawyer.”

Affirming convictions for sexual and physical assaults, the **Alaska Court of Appeals** held that the trial judge was not required to recuse himself after he realized and disclosed, at the beginning of the trial, that the victim's sister lived in his neighborhood, that his wife was friends with her, that their children played together, and that the sister's older child had babysat the judge's children.

The **New Mexico Supreme Court** ordered that Judge Michael Murphy permanently resign from judicial office on February 24, 2012, and never hold or become a candidate for judicial office in the future. The notice of formal proceedings filed by the Commission in December alleged that the judge made offensive and/or derogatory and/or inappropriate statements regarding a person or group of persons in a conversation with Judge Lisa Schulz during business hours on December 10, 2010, and to court staff members and others in his capacity as judge between January 1, 2008 and February 4, 2010. Neither the order, the stipulation, nor the notice describe the statements.

According to news reports, in a conversation secretly recorded by Judge Schultz, Judge Murphy made offensive statements about homosexuals.

The **U.S. Court of Appeals for the 9th Circuit** affirmed the decision of Judge Vaughn Walker holding that an amendment to the California constitution (Proposition 8) eliminating the right of same-sex couples to marry violated the Fourteenth Amendment

to the U.S. Constitution. The proponents of Proposition 8 had filed a motion to vacate the Judge Walker's judgment because, after resigning from the bench, Walker disclosed that he was gay and has been in a relationship with another man for ten years.

Chef Judge Ware had denied that motion, explaining that the fact that a judge "could be affected by the outcome of a proceeding, in the same way that other members of the general public would be affected, is not a basis for either recusal or disqualification" and that it could not "possibly be 'reasonable to presume' . . . 'that a judge is incapable of making an impartial decision about the constitutionality of a law, solely because, as a citizen, the judge could be affected by the proceeding.' To hold otherwise would demonstrate a lack of respect for the integrity of our federal courts."

New Jersey Governor Chris Christie promised that Paul Harris, his recent nominee to the state **Supreme Court**, will recuse himself from ruling on gay-marriage issues. Harris is openly gay and has advocated for gay marriage.