

March 08, 2011

The **Utah Judicial Ethics Advisory Committee** opines that a judge may not refer parties to a specific mediator either where the parties ask the judge for suggestions for a mediator; nor may offer a recommendation without being asked. The Utah committee concluded that a reference to a specific person is a violation of Rule 1.3. Although Florida Judicial Ethics Advisory Committee Op. 08-1 approves providing a list of at least three mediators, the Utah committee declined to address the procedure. Utah Informal Opinion 10-02.

New York's chief judge, Jonathan Lippman, is taking on the problem of money in judicial elections. At his urging, a state judicial board is proposing to bar more than 700 elected judges from hearing cases involving any lawyer or party who contributed \$2,500 or more to the judge's campaign in the preceding two years... In races for the State Supreme Court (a N.Y. trial court), about a third of the candidates spend more than \$75,000 on their campaigns — with many contributors giving \$2,500 or more. In a 2008 Democratic primary for Surrogate's Court in Manhattan, the three candidates together raised nearly \$900,000

Legislation has been introduced in Arizona, Florida, Hawaii, Missouri, Kansas, Oklahoma and Tennessee to restructure or eliminate long-standing merit selection systems. Every week, a range of new bills are being introduced that would variously:

- Eliminate merit selection plans entirely and replace them with partisan elections;
- Keep judicial nominating commissions, but limit their independence and effectiveness, while giving governors more leeway to make politically-motivated appointments;
- Abolish nominating commissions and give governors sole authority to make political appointments to the bench;
- Add legislative confirmation of governors' nominees to the bench, which may introduce heightened partisanship, delay and litmus-testing to the selection process.

The **American Judicature Society** is seeking applicants for the position of Director of Research & Programs. A degree in law or political science and a specialty in judicial selection issues are preferred, although candidates with other relevant experience and subject expertise on law and courts will be considered.

The **Indiana Supreme Court** suspended Judge William Young for 30 days without pay for (1) exhibiting impatience and frustration with a defendant and her attorney and making sarcastic remarks during a bench trial on traffic charges and (2) imposing increased penalties on traffic infraction litigants for exercising their trial rights; imposing penalties in traffic cases without an individualized assessment of the litigant and the case; giving general advisements to defendants that understated the State's burden of proof; and frequently speculating to indecisive defendants about what the State's evidence might be. Throughout 2009, the judge imposed substantially higher penalties (\$300 to \$400 in fines, plus court costs) against traffic infraction litigants who exercised their right to trial and lost, as compared to those who pleaded guilty. (February 14, 2011)

"One hundred law professors signed a letter to the **U.S. House and Senate Judiciary Committees** urging that the U.S. Supreme Court be bound by a code of judicial ethics. Either the substance of the letter or (more likely) the methodology for collecting signatures is questionable, because several big names in judicial ethics are noticeably absent. The lack of binding Supreme Court ethics rules is indeed one of the single most embarrassing things in the judicial ethics field. It is breathtakingly hypocritical that all of the federal and state judiciary underneath the Supreme Court must comply with a code to which the Court is not likewise held accountable. The long-overdue letter can be read" (Judicial Ethics Forum).

U.S. Representative Christopher Murphy said he would introduce legislation that would apply the **Judicial Conference's Code of Conduct for U.S. Judges** to the justices of the U.S. Supreme Court, would require the justices to publicly disclose why they have recused themselves from cases, and would require the Court to develop a process that would allow parties to a case to "request the court to decide whether a particular justice has a conflict of interest." Murphy said his bill is needed in light of reports he said suggest Justice Antonin Scalia and Justice Clarence Thomas might have had a conflict of interest in the Citizens United case because they attended a conference with two Kansas businessmen who benefitted from the decision while the case was pending.

U.S. Senator Chuck Grassley and Rep. James Sensenbrenner have introduced legislation to create an Inspector General for the federal judicial branch. The House bill would cover only the federal district and circuit courts. The Senate bill would allow the Inspector General to investigate the Supreme Court. The legislation also includes whistleblower protections.

The **Vermont Judicial Conduct Board** issued public reprimands to Judge Mark Keller for (1) serving as a partner in a real estate partnership with lawyers likely to appear before him and failing to disqualify himself from cases in which tenants in the building owned by the partnership appeared as counsel; and (2) a series of demeanor complaints. The demeanor violation involved a contested parentage and visitation proceeding where grandparents requested the appointment of a guardian ad litem for the minor child. The judge was short with the grandparents' lawyer at the hearing, cutting off the responses. His comments and demeanor discouraged the grandparents from pursuing a guardianship petition. The judge agreed he had been inappropriate and attended five anger management counseling sessions. He has adopted techniques to reduce the likelihood of his being excessively argumentative with litigants or lawyers.

(February 16, 2011).

Tammy Griffith, a former assistant fiscal manager at **Orleans Parish (Louisiana) Juvenile Court**, filed a federal lawsuit *claiming* that she "was the victim of Judge David Bell's constant sexual harassment" over 3-1/2 years. The federal lawsuit alleges that Bell propositioned Griffith and, after she refused saying that she did not sleep with people at work and did not "fool around with married men," he put unsigned divorce papers on her desk. The suit also alleges that Bell showed her an e-mail that indicated two salary amounts, \$60,000 or \$70,000, and stated that for him to choose the higher amount, "she would have to 'go upstairs and take off (her) skirt.'" Griffith also names other judges in the lawsuit, alleging that they knew about, but did not respond to Bell's conduct.

The **Georgia Supreme Court** has removed former **U.S. District Judge** Jack Camp from the rolls of persons entitled to practice law in the state. Last November, the judge pled guilty in federal court to aiding and abetting a felon's possession of a controlled substance, possession of a controlled substance, and embezzlement/theft of public property. He had bought drugs from an undercover FBI agent while in the company of an exotic dancer who had become an FBI informant and to whom he had given his government-issued laptop. He resigned as a condition of the plea deal. (Feb. 28, 2011).

A jury found former **Pennsylvania** judge Mark Ciavarella guilty on 12 of the 39 federal counts in the "Cash for Kids" scandal. Ciavarella was found guilty of racketeering, racketeering conspiracy, mail fraud, money laundering conspiracy, conspiracy to defraud the U.S., and filing false tax returns. He was found innocent of bribery, wire fraud, extortion, and money laundering. He faces a maximum sentence of 157 years in prison. The jury also found that he must forfeit the \$997,600 "finder's fee" he received from the developers of private juvenile detention centers. He is free pending the appeal on \$1 million bond. His lawyer says he will appeal.

Ciavarella testified in his own defense, saying he concealed the finder's fees he received, not because he thought they were illegal, but because he wanted to avoid the "scrutiny and publicity" he now finds himself in. He also admitted that he pocketed \$15,000 to \$20,000 in cash donations from his 2005

retention campaign without reporting it. Ciavarella testified that he was living beyond his means, requiring loans and cash advances to support his and his family's lifestyle. According to the prosecution and credit card statements, Ciavarella spent \$310,911 within 4 or 5 days of receiving the \$330,000 finder's fee. Ciavarella said he did not pay taxes on the fee because the money was a "loan" from a business. (Feb. 18, 2011).

Noting "there have been numerous media reports and public reaction," the **Canadian Judicial Council** confirmed that it is reviewing complaints about comments Judge Robert Dewar made while sentencing a man convicted of sexual assault. According to news reports, Judge Dewar said the victim and a friend were dressed in tube tops and high heels when they met the accused and another man outside a bar "and made it publicly known that they wanted to party." The judge said that the defendant had the mistaken belief "sex was in the air" and a "heightened expectation" that sex would occur. The victim rebuffed the accused three times before he raped her on the side of a road.

The **Mississippi Supreme Court** reprimanded Chancellor Larry Buffington for issuing subpoenas to county commissioners without complying with the law. On January 6, 2009, the judge issued an order appointing Oliver Diaz as the county youth court public defender. Diaz, a **former supreme court justice**, had been defeated in November 2008 after being acquitted in a judicial bribery case. After news of the youth public defender appointment was released to the media, the judge asked members of the county board of supervisors to appear before him to determine who was upset about the appointment and who had released the information to the media. Two members of the board indicated they would not appear and the judge had subpoenas issued and served on them. The subpoenas did not indicate a title or case number of any pending action. The two supervisors filed a motion to quash, which the judge granted. However, during a meeting with the board of supervisors, the judge admitted that he had failed to comply with the Mississippi Rules of Civil Procedure in issuing the subpoenas and stated that he was unconcerned that he had failed to comply. (February 17, 2011).

The **New Mexico Supreme Court** suspended court of appeals Judge Robert Robles without pay until resolution of the **Judicial Standards Commission's** inquiry into his arrest for driving while intoxicated. The Court ordered that the documents in the proceeding be unsealed. The suspension was retroactive to February 16, the date the judge was arrested. He had earlier taken a voluntary leave without pay and had reported his arrest to the Commission. The judge stipulated that "his continued service in a judicial capacity while he is being prosecuted by the State and investigated by the Commission on the stated allegations would create an apparent conflict of interest" and that deference to his "rulings, especially in criminal cases, would be undermined." The arrest has generated a great deal of publicity, and the head of an anti-drunken driving group in New Mexico has called for the judge's resignation.

Colorado Judicial Code Rule 1.3: "...when engaging in extrajudicial activities, a judge shall not: . . . (E) Make use of court premises, staff, stationery, equipment, or other resources except for incidental use for activities that concern the law, the legal system or the administration of justice, or unless such additional use is permitted by law."

The **Nevada Standing Committee on Judicial Ethics and Election Practices** approved the use of court resources to prepare and send a letter to jurors following their release from jury duty thanking them for their service and asking for input on improving the experience of jury service. (The concern appears to arise from the potential use of the letters as judicial election campaign materials). Nev. Adv. Op JE 10-015 (Dec. 23, 2010).

Legislators are considering raising the qualifying fees for judicial candidates (from 3% of their expected salaries to 4%) to raise more funds for the **Georgia Judicial Qualifications Commission**. The measure could yield \$150,000 a year.

Judge William Singletary says the **Mississippi Commission on Judicial Performance** investigated but dismissed a complaint against him alleging that he placed a machete to the throat of a county tax employee who had entered the judge's property. A criminal assault charge against Judge Singletary also was dismissed. To defend a pending civil suit, the judge is relying on the state's "castle law," which allows Mississippians to use deadly force when they believe they are in imminent danger. The assessor employee claims he would not have pursued the case if Singletary had not brought the machete to the courthouse and bragged to bailiffs, calling himself "Samurai Singletary."