

December 28, 2011

For more about news that affects courts and judges see the new AJA blog at <http://blog.amjudges.org/>.

The following is from **Colorado Judicial Ethics Advisory Board** Opinion 2009-02:

“The requesting judge received a death threat from a man over whose dissolution of marriage proceeding she presided. . . . As the Tenth Circuit has pointed out, ‘if a death threat is communicated directly to the judge by a defendant, it may normally be presumed that one of the defendant’s motivations is to obtain a recusal.’ U.S. v. Greenspan, 26 F.3d 1001, 1006 (10th Cir. 1994). . . . [W]e endorse the requirement in *Riordan* and *Basciano* that ‘the circumstances of the case **must demonstrate** that the defendant’s behavior has resulted in actions by the judge which might be viewed by an objective, disinterested observer as evidencing bias.’ . . . Thus, we conclude that **absent some showing of bias, threats alone** do not require recusal. . . . Here, although the judge has been threatened, the facts presented do not suggest that the judge has taken any actions that might evidence bias to an objective observer, and thus do not raise an appearance of impropriety.”

The **New York State Commission on Judicial Conduct** publicly admonished Judge John Riordan for regularly holding court proceedings in his chambers from the fall of 2003 until July 2010 “for reasons of personal convenience.” The deputy court clerk, court clerk, and [alternate defense counsel] had told the judge that he should hold court in the courtroom.

In July 2009, at a training session attended by the judge and the clerks, an instructor discussed the need to hold court proceedings in the courtroom. Shortly thereafter, the judge acknowledged to the court clerks that he should hold court in the courtroom, but continued to hold court in his chambers until a Commission investigator visited his court in July 2010.

(November 9, 2011)

The **Alaska Commission on Judicial Conduct** has filed a complaint alleging that Judge Dennis Cummings made *ex parte* suggestions about relevant legal authority to the prosecutor in 2 cases that were scheduled before the judge. On June 1, 2011, while off the record following regular court proceedings, the judge initiated a conversation with assistant district attorney Ben Wohlfeil and suggested that Wohlfeil read the memorandum opinions issued that day by the court of appeals because they were relevant to cases that Wohlfeil had pending before the judge. The following day, the judge again suggested that Wohlfeil read the opinions because they concerned issues that he was litigating before the judge. After reading the opinions, filed a notice of supplemental authority in the two cases. The complaint noted that, in 2009, the Alaska Supreme Court had suspended the judge for 3 months without pay for improper *ex parte* communications that could be viewed as aiding the prosecution.

According to news reports, Judge Daniel Mabley has reported himself to the **Minnesota Board on Judicial Standards** after defense attorneys claimed that the prosecutor in a child molestation case had asked Mabley for advice; Judge Mabley is not the presiding judge in the case. The judge, a member of the Board, told a reporter, “Suffice it to say that I am confident that I engaged in no unethical or improper conduct.”

The **New York Commission** censured Judge Kevin Hunt for intervening in a friend’s traffic case. (November 9, 2011)

The **Arkansas Commission** publicly reprimanded Judge Ken Harper for driving while intoxicated and publicly censured him for presiding while intoxicated and other public incidents in which he was under the influence of alcohol; the letter of censure also imposed conditions on the judge. The press release announcing the actions noted both parties “wish to thank the Arkansas JLAP (**Judges and Lawyers**)

Assistance Program) for providing kind and efficient help and services to the legal profession in Arkansas.”
(November 18, 2011)

The **Minnesota Senate Committee on the Judiciary and Public Safety** is considering a bill that would change the membership on the **Board on Judicial Standards** to four members of the state house and four members of the state senate and adopt a code of judicial conduct. According to Gavel to Gavel, a newsletter of the **National Center for State Court**, “several Senators who spoke in favor of the bill did so with an eye towards using the judicial disciplinary process . . . to put pressure on the courts to rule certain ways or to provide a free or low cost alternative to an appeal.

I.

An **Illinois** judge denied a motion to overturn a conviction based on allegations that family members of the victim were **Facebook “friends”** with the children of Judge Daniel Rozak, who presided over the bench trial. The motion also argued that Judge Rozak has a “close, personal friendship” with the victim’s grandfather, a trial witness, that 1 of the judge’s daughters works with an aunt of the victim, and that the judge’s children graduated in the same high school class of around 100 students as the injured boy’s mother in 2001. In an affidavit, Judge Rozak said he did not know any of the family members who testified at trial and that none of his children had ever discussed the case with him, adding “Since my children are adults and living on their own, I no longer vet their ‘friends’ and do not utilize their ‘electronic networking sites.’”

II.

(Excerpts from an Associated Press story by Ian James, Nov. 20, 2011)

CARACAS, Venezuela (AP) — Once a month, Venezuela's best-known judge is handcuffed, led out of her apartment and escorted by troops to a courthouse to stand trial. But [Maria Lourdes Afiuni](#) refuses to enter the courtroom. It is her way of saying she won't get a fair hearing. The combative and self-assured judge is being tried on corruption charges that have made her a cause *celebre* to government opponents who accuse President [Hugo Chavez](#) of wielding undue influence over Venezuela's judicial system.

Afiuni infuriated Chavez when she freed a banker from the prison where he was awaiting trial on charges of flouting the country's currency exchange controls. A day after her arrest on Dec. 10, 2009, Chavez said on national TV that he had discussed Afiuni's action with the president of the [Supreme Court](#). "This judge," he fumed, "should get the maximum sentence, and whoever does this — 30 years in prison!"

Afiuni was arrested minutes after she released banker [Eligio Cedeno](#), who had been in jail awaiting trial on charges of violating currency controls. He was accused of helping a company obtain \$27 million in dollars through the government for computer equipment that never reached Venezuela.

Afiuni's brother noted that Venezuelans in custody should not by law be held longer than two years without trial, and Cedeno had been in jail for nearly three years. Also, he said, the judge felt the evidence was too thin to justify continued imprisonment, and the prosecutors had for the second time failed to show up for hearings. Chavez called it corruption. "I demand firmness against that judge," he said. "A judge who frees a criminal is much, much, much more serious than the criminal himself."

The **Mississippi Supreme Court** publicly reprimanded Judge Albert Smith and fined him \$1,000 for telling a defendant “if you’re convicted, I’m gonna get you” and discourteously addressing and wrongly imposing contempt sanctions on a bail bondsman and two lawyers. Richard Becton failed to appear at his scheduled arraignment. When he later appeared and announced that he did not have counsel, the judge responded, “You don’t take these charges serious [sic] do you?” After appointing counsel, the judge said: “I would suggest you call [your counsel] ‘cause if you are convicted, I’m going to get you.”

The judge also told Becton's bail bondsman, Marshall Sanders, to "get on top of getting his people to court at the right time." After threatening to hold the bondsman in contempt if his clients failed to appear, the judge ordered him jailed for a week, although the judge released him after three days. (Dec. 15, 2011)

The presiding judge said the **Missouri Commission on Retirement, Removal and Discipline** is aware that while Judge Barbara Peebles was on vacation in China, her court clerks handled at least 350 cases — dismissing 5, refusing to dismiss at least 1, deciding that 18 arrest warrants should be issued, and continuing the other cases to later dates, telling defense lawyers there would be no bail reductions while the judge was gone. Judge Peebles did get other judges to cover part of her work.

A **Las Vegas** judge is turning the tables on two whistle-blowing prosecutors by condemning their evidence gathering methods: a clandestine crotch photo intended to show a budding romantic relationship. In court papers filed Tuesday, Family Court Judge Steven Jones called for a criminal investigation of two prosecutors who snapped the picture, the [Las Vegas Review-Journal](#) reports. According to the newspaper, the photo appears to show the judge's hand moving toward or away from the leg of prosecutor Lisa Willardson. Jones banned the two photographer prosecutors from his courtroom after the incident. The court documents claim the two prosecutors took the photo of the judge's crotch under the table while engaging in "alcohol-influenced speculation" during a restaurant retirement party on Halloween. "The salacious tale spun by the state with regard to this alleged relationship is a red herring designed to deflect attention from the state's own unprofessional, unethical and adolescent and possibly criminal conduct," according to the document filed by Jones' lawyer, James Jimmerson. The court papers deny that Willardson and Jones were in a relationship at any time when Willardson appeared in his courtroom. After the photographic evidence came to light, Clark County District Attorney David Roger barred Willardson from handling cases before Jones and then fired her last week, the newspaper says. Roger told the newspaper he filed an ethics complaint with the **Nevada Commission on Judicial Discipline** on Tuesday. (Dec. 21, 2011)

A judicial advisory opinion of the **Ohio Supreme Court Board of Commissioners on Grievances and Discipline** states that a judge may not recommend or endorse a candidate for a bar association elective office. [Ohio Advisory Opinion 2011-3](#)

The **Tennessee Court of the Judiciary** publicly reprimanded Judge David Bales for 2 incidents in which he publicly criticized other judges' decisions to lower bonds he had set. (Dec. 6, 2011)

New trials have been ordered for four defendants who had been convicted of a double sexual torture and murder because the presiding judge had been intoxicated during parts of the 2009 and 2010 jury trials. The **Administrative Office of the Tennessee Courts** released the following statement

"As of this morning, the Administrative Office of the Courts has received more than 16,000 email petitions requesting the Supreme Court to stop the retrials of the four defendants. . . .," said Laura Click, public information officer for the Administrative Office of the Courts.

"We certainly appreciate and understand the public's interest in these cases, however, the Code of Judicial Conduct prevents the Supreme Court, or any judge, from considering ex parte communications as part of its decision making process. In other words, a judge cannot consider any communications made to the judge without the parties in the case being present.

"The Code of Judicial Conduct also prohibits judges from commenting on any cases that may come before them. Should the state file an appeal from the trial judge's decision granting the motions for retrials, the appellate courts will consider the appeal based on the facts and information filed with the court as part of the regular appeals process, described in the Tennessee Rules of Appellate Procedure," Click said.

The **Wisconsin Democracy Campaign** filed a complaint with the **Wisconsin Judicial Commission** against Justice Michael Gableman after the media report that Justice Gableman received thousands of dollars of free legal service from a law firm that defended him against discipline charges based on his 2008 campaign statements. In a letter to the Supreme Court responding to a newspaper story, the firm's general counsel wrote that, pursuant to his agreement with the firm, Justice Gableman was required to pay attorney fees only if he recovered those fees from the state. State law says judges who prevail in a case can ask the state claims board to reimburse their legal fees, but, because the **Supreme Court** split 3-3 on whether he had violated the code of judicial conduct, Justice Gableman could not argue that he had prevailed.

Justice Gableman has sat in nine cases involving the firm since it began representing him, voting in favor of its clients five times and casting the deciding vote in favor of parties represented by the firm in two of the cases, including the decision to allow the governor to implement a law reducing collective bargaining rights for most public workers. In the four cases in which the justice ruled against the firm's client, three were decided 7-0 and one by a 6-1 vote. The firm has 5 cases currently before the Court from which the justice has not disqualified himself.