

Philadelphia Common Pleas Court Judge Willis W. Berry Jr. will not face criminal charges for operating a real estate business out of his chambers. District Attorney Lynne M. Abraham accused the **Pennsylvania Court of Judicial Discipline** of "passing the buck to prosecutors," and announced that she could not justify criminal charges when the court refused to remove Berry despite having "the evidence and the authority to do so." Berry began buying up, renovating, and leasing properties in North Philadelphia before he became a judge to supplement his law practice.

The Court of Judicial Discipline began its investigation after **The Philadelphia Inquirer** reported that Berry was using his chambers to manage the properties, many of which were in deplorable condition and ridden with roaches and rodents. The reports resulted in the property-fraud lawsuit against the judge by a former client and sometime associate that ended when a civil jury awarded her \$180,000 in punitive damages. *The Philadelphia Inquirer*, Dec. 18, 2009. [Link to article.](#)

[http://www.philly.com/inquirer/home\\_region/20091218\\_No\\_charges\\_for\\_judge\\_who\\_ran\\_business\\_from\\_his\\_office.html](http://www.philly.com/inquirer/home_region/20091218_No_charges_for_judge_who_ran_business_from_his_office.html)

The **Florida Judicial Ethics Advisory Board Opinion 2009-20**, opines that a judge may not "may add lawyers who may appear before the judge as 'friends' on a **social networking site**, and permit such lawyers to add the judge as their 'friend.' . . .The Committee believes that listing lawyers who may appear before the judge as 'friends' on a judge's social networking page reasonably conveys to others the impression that these lawyer 'friends' are in a special position to influence the judge." (Nov. 17, 2009).

**Ohio Supreme Court Chief Justice** Thomas J. Moyer is "leading a quest to depoliticize the state's highest court by replacing competitive elections every six years with a far less frequent 'retention' election in which the justice doesn't face an opponent." Moyer, along with the **League of Women Voters Ohio Education Fund** and the **Ohio State Bar Association**, sponsored an event last week to "build support for the idea" of adopting a judicial selection system that relies on a merit commission and retention elections.

James Nash, *Columbus Dispatch*, November 17, 2009.

Since retiring from the high bench, **U.S. Supreme Court Justice Sandra Day O'Connor** has advocated against the use of elections to pick state judges. Now she is teaming with a center at the University of Denver to try to add some political teeth to her efforts. On Thursday, the **Institute for the Advancement of the American Legal System** announced the creation of the **O'Connor Judicial Selection Initiative**, a project that will assist state level efforts to move away from judicial elections. . . . Its first major test would be in Nevada, where a proposed constitutional amendment would replace judicial elections with merit-based selection. . . ."No other nation in the world elects their judges in popular elections," O'Connor said. "We are alone in that regard."

A case involving a radio commentator who threatened the lives of three federal judges in June "doesn't fall neatly into case law . . . and may carve out new precedent to cover the Internet free-for-all of invective," reports Lynne Marek at **The National Law Journal**. While the commentator, Hal Turner, "could make a strong case that he was engaging in protected 'rhetorical hyperbole,'" his alleged conduct nonetheless seems to fall, in the eyes of First Amendment experts, "firmly within the category of 'true threat.'" Lynne Marek, *The National Law Review*, November 24, 2009.

The **Illinois Courts Commission** publicly reprimanded Judge Sheila McGinnis for driving while under the influence of alcohol, which led to an accident that damaged the other vehicle. In re McGinnis, Order (November 18, 2009).

The **New York Court of Appeals** heard arguments in its review of the June determination of the **State Commission on Judicial Conduct** that Judge James Gilpatric be admonished for failing to render timely decisions in 47 cases.

The **Michigan Attorney Grievance Commission** found that "no further action is warranted" on grievances filed against **Judicial Tenure Commission Executive Director** Paul Fischer. More than a dozen lawyers, including former presidents of the Grand Rapids Bar Association, filed a grievance alleging Fischer tried to extort Judge Steven Servaas' resignation in a confrontation in which Fischer presented the judge with a resignation letter to sign in lieu of the Commission filing a complaint.

South Carolina Judge Segars-Andrews is up for appointment to a 6-year term next year. The **South Carolina Judicial Merit Selection Commission** found Judge F.P. Segars-Andrews **unqualified** because she did not disqualify herself from a divorce case in which the mother's lawyer had shared in a significant settlement with her husband's law partner. Near the end of 2-day hearing the husband's lawyer asked Judge Segars-Andrews to recuse herself because the wife's lawyer had been involved in a lucrative case with the judge's husband's law firm. "I did not think about that," she told the attorneys, according to the transcript. "You all have to retry the case." When the wife's attorney argued that she was unaware of the dealings he had with her husband's law partner when she tried the case, the judge said, "It still should have been disclosed, and I can't, at this point remedy that."

After the parties filed briefs on disqualification, she ruled on the case. The father appealed, and the **Court of Appeals** found that "Judge Segars-Andrews' remarks about her concern for not disclosing the information at the beginning of the hearing do not show any bias or prejudice but instead show her sensitivity to any apprehension each side might have in her ability to make a fair and impartial ruling in the case."

Reversing a conviction based on guilty pleas, the **Minnesota Supreme Court** held that the trial judge should have recused from the defendant's motion to withdraw his guilty pleas because the

judge had had ex parte communications with the prosecution. The defendant had entered an Alford plea to criminal sexual conduct, violating a restraining order, and other charges. Before the sentencing hearing, Judge Sandvik had two ex parte communications with the prosecutor, one on the phone and the second in the judge's chambers, which was recorded. During that communication, the judge initiated a discussion with the prosecutor about the possibility that the defendant would move to withdraw his guilty pleas.

The prosecution maintained that the judge's ex parte communication with the prosecutor was for administrative purposes and, therefore, permitted by the code of judicial conduct, contending that the judge merely instructed the prosecutor to be prepared in advance for the plea-withdrawal motion so that the prosecutor would not have to request a continuance to prepare a response. The defendant later sought to withdraw his pleas, which Judge Kenneth Sandvik denied. State v. Schlien (Minnesota Supreme Court November 5, 2009).

The **Michigan Supreme Court** released its new administrative recusal rule. The rule allows the full Supreme Court to review an individual justice's decision not to recuse. According to Mark Hornbeck of the *Detroit News*, "the rules were crafted in reaction to a decision handed down this summer [in *Caperton v. Massey*] by the U.S. Supreme Court." The 4-3 decision to adopt the new recusal procedure has provoked bitter disagreement on the bench, with Justices Corrigan and Young not only opposing the rule, but warning of internecine battles among the justices over disqualification issues. According to Justice Young:

In eliminating all due process protections, compromising and chilling protected First Amendment rights, and conducting secret appeals that might lead to the removal of an elected justice from a case against his will the majority has created a 21<sup>st</sup> Center Star Chamber with its new disqualification rule. . . . [W]hen the justices of this Court become the arbiters of a disqualification decision of one of its members, there are substantial questions whether an impartial arbiter is involved. It is no secret that this Court is riven with deep philosophical, personal, and sometimes frankly partisan cleavages.

Rule available [here](#).

In a recent op-ed in the *Pittsburgh Post-Gazette*, Justice Debra Todd of the **Pennsylvania Supreme Court** laments the "media coverage of [last] month's Pennsylvania Supreme Court election results," arguing that headlines and editorials emphasizing the victor's political party attest to a "fundamental misunderstanding of the judicial branch." The judiciary, she reinforces, is guided not by "political cronyism" but by "timeless notions of fairness, equity and impartiality." Debra Todd, *Pittsburgh Post-Gazette*, November 23, 2009.

In a much anticipated move, **Wisconsin Governor** Jim Doyle signed into law the Impartial Justice bill, which will provide full public funding for Supreme Court campaigns. . Office of the Governor, Press Release, December 1, 2009.

The **New York State Commission on Judicial Conduct** censured Judge Michael Feeder for (1) using his judicial power to effect the arrest of a motorist, then taking action in the case, and making comments about the case to newspapers; (2) imposing a lenient disposition in a case

without disclosing an ex parte request for leniency by the defendant's mother; (3) granting an adjournment in contemplation of dismissal without notice to or the consent of the prosecution; and (4) presiding over cases filed by members of the police department without disclosing his close friendship with the assistant chief of police. In the Matter of Feeder, (November 18, 2009) ( [www.scjc.state.ny.us](http://www.scjc.state.ny.us) ).

The **Wisconsin Judicial Commission** filed a complaint alleging that Judge John Zodrow has refused to timely decide cases or reduce his case backlog and, since May 2008, has refused to adjudicate parking ticket stipulation cases in protest after the police department cut off the court's access to the police department computer. Judge Zodrow sits on the City of Cudahy Municipal Court, which has an annual case load of approximately 4000 cases. The court clerk recently counted approximately 3,500 cases in Judge Zodrow's office awaiting decision. The complaint alleges that Judge Zodrow said that parking stipulation cases "can sit and collect dust until hell freezes over for all I care."