

October 20, 2011

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

The **Mississippi Supreme Court** suspended Judge Nell Cowart without pay for 60 days and publicly reprimanded her for ex parte conversations with a criminal defendant and the defendant's husband, attempting to release the defendant from jail, and making comments during two hearings that clearly reflected their personal relationship.

Sheriff's deputies arrested Anita Pearson, a bail bondsperson, and charged her with kidnapping, armed robbery, and extortion. When Pearson was brought before the judge, the judge ordered her handcuffs and shackles removed and stated that "Pearson was not a criminal."

A few weeks later, sheriff's deputies arrested Pearson a second time, charging her with conspiracy to intimidate a witness. The judge spoke with Pearson's husband about the second arrest and then called the sheriff's department in an attempt to release Pearson from jail. When the judge had no success, the judge called the jail again and demanded to speak with Pearson. When Pearson was brought before her for a second initial appearance, the judge again ordered that the handcuffs and shackles be removed from Pearson and stated that Pearson was not a criminal and "would not spend another night in jail." While an officer was testifying about the allegations against Pearson, the judge became emotional and tearful. The judge later apologized to the officers for her emotional display.

The Supreme Court found that the judge inappropriately allowed her personal relationship with Pearson to affect her conduct and that she interfered with the administration of justice by engaging in ex parte communications with Pearson and her husband and continually demonstrating her personal relationship with Pearson and that she exhibited moral turpitude by attempting to use her position to help Pearson.

(September 8, 2011) [www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO71103.pdf](http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO71103.pdf)

The **California Commission on Judicial Performance** publicly admonished Judge James Wagoner for abuse of the contempt power. While on the bench, the judge received a report that Penny Arnold was in the courthouse lobby using her cell phone to take pictures or videos of people involved in dependency proceedings. After recessing the proceedings in his court and removing his robe, he proceeded to the lobby with two bailiffs and ordered Arnold to immediately report to his courtroom for a hearing. Arnold, who was not involved in any matter pending before Judge Wagoner, did not comply and asked to speak with her attorney. The judge warned that if she continued to refuse to comply she would be cited for contempt of court. When Arnold did not comply, the judge directed the bailiffs to arrest her for contempt. Arnold was handcuffed and escorted to a jury room; her phone and an audio recording device were confiscated. After approximately 40 minutes, Arnold was transported to jail pursuant to an order issued by the judge that stated she was charged with contempt of court. Arnold was in jail for approximately 3 hours before she posted bail.

Among other things, the Commission determined that the judge's actions constituted abuse of the contempt power and violated Arnold's due process rights. The Commission found that the judge's order that Arnold immediately report to his courtroom was not a valid order on which a contempt charge could be based because her conduct did not occur in the judge's courtroom and did not involve a proceeding pending in his court. (September 13, 2011)

Dismissing a complaint filed by **Judicial Conduct Board**, the **Illinois Courts Commission** found that Judge Christopher Perrin's discussion of his daughter's ticket with another judge was an error of judgment but concluded it did not warrant a public reprimand.

A **Texas** grand jury indicted Justice of the Peace Carlos Medrano on felony charges of soliciting illegal votes in connection with his March 2010 election. Medrano is charged with persuading his nieces to register at false addresses so they could vote for him.

#### **May you recommend a specific mediator?**

Code of Judicial Conduct Rule 1.3 states that a judge “shall not . . . advance the personal or economic interests of . . . others.”

**Florida JEAB Opinion 08-01.** “The second question is whether it is appropriate for a judge, at the request of the parties, to recommend a mediator in an adversarial probate proceeding. Judges are not to use their public office to promote the private interests of others. Accordingly, if both sides request the Judge to recommend a mediator, the Judge may proceed to do so but with great caution. The Committee suggests that the Judge recommend at least three persons and not reflect any preference. If the Judge is asked on more than one occasion by both sides of a contested matter for a recommendation, the Judge should be careful not to repeatedly recommend the same mediator(s). One Committee member dissents and advises against the Judge making any recommendations.”

**Utah JEAB Opinion 10-02.** “A judge may not refer parties to a specific mediator. . . . The Committee agrees with the Florida Committee that a judge may not refer individuals to a specific mediator. . . . At this point the Committee will not offer an opinion on whether a judge may provide a list of mediators as was approved by the Florida Committee. The Committee has not been asked that particular question.”

#### **Judicial independence and merit selection**

Code of Judicial Conduct Rule 1.2 states that a judge “shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary . . . .”

#### **Excerpt, Wall Street Journal Editorial (September 15, 2011) re: merit selection**

The so-called Missouri Plan for judicial selection has become controversial in dozens of states that use it for giving disproportionate influence to liberals and trial lawyers. Now Missouri itself is again illustrating why. To fill a vacancy on the state supreme court, Missouri's judicial nominating commission has chosen a slate of three candidates that would make George Soros blush.

Leading the trio sent to Governor Jay Nixon is Joe Jacobson, a trial lawyer whose firm, Green Jacobson, is known for its work in securities fraud, lender liability and consumer class actions. A second nominee, County Circuit Judge Michael Manners, spent two decades as a trial lawyer himself, eventually serving as president of the Missouri Association of Trial Lawyers. Rounding out the trio is George Draper III, a state appeals-court judge and African-American who received the fewest votes (four) from the seven nominators.

The Missouri Plan was intended to get politics out of the courtroom but has instead handed disproportionate power to trial lawyers and state bar associations. The effect has been to insulate the backroom-dealing from public scrutiny while stocking state courts with liberal judges. At a recent summit defending such "merit" selection plans in St. Louis, the Iowa Lawyer Weekly reported that in 2011, 26 states considered legislation to ditch or revise their method of choosing judges.

#### **Excerpt, Wall Street Journal 'letter to the editor' by the Missouri Bar Ass'n President**

Your editorial position on the issue of merit selection of judges, often called the Missouri Plan, is simply wrong. The citizens of Missouri are pleased with the Missouri Plan, contrary to your statement that they are not. In 2008, the citizens of Greene County, Missouri—a conservative

area—voted to join the Missouri Plan of merit selection, overturning election of judges. Last year a \$1.6 million campaign, funded by a few wealthy individuals, tried to convince Missouri's citizens to change the Missouri Plan to direct election of judges. This attempt failed to even get enough signatures to get the proposal on the ballot.

It is not surprising that there are attacks on choosing judges according to merit. Merit selection works to remove politics from the selection of judges. People with money and power who wish to make judges a second legislative branch, subject to their influence, do not like being told "no." The basic facts are that our system of selecting judges by merit works, the citizens of Missouri like it and our judicial branch is better for it. I believe that instead of lobbying to convince the public that, "if judges are changed, you can change the law," like a legislative branch of government, the Journal should be lobbying to keep judges impartial, separate from political fund raising and the biases of party politics.

**“Tennessee** lawyers, including former U.S. Sen. **Fred Thompson**, are asking the **Supreme Court of Illinois** to take a new look at whether one of its own was too biased to rule in a 2005 case that overturned a **billion-dollar** verdict against State Farm Insurance. The state supreme court considered and rejected the argument that Judge Lloyd Karmeier was biased because of the \$4.5 million he raised in his campaign, about \$350,000 came from people linked to State Farm. The U.S. Supreme Court likewise declined to take an appeal based on that argument.

“What’s different now? Research from a former FBI agent shows State Farm raised \$2.4 million to \$4 million of Karmeier’s \$4.5 million budget, according to the petition the attorneys have filed with the state supreme court on behalf of State Farm customers. “State Farm lawyer and lobbyist William G. (“Bill”) Shepherd was on the Executive Committee of the Illinois Civil Justice League that recruited Justice Karmeier to run for the seat,” the suit states. “State Farm deliberately lied to and misled the Court,” the suit states. Though oral arguments had already been made in the case when Karmeier won the hotly contested race for Supreme Court, he declined requests to recuse himself from ruling on the case. His vote made the difference in key parts of the case, the suit states.”

Chicago Sun-Times (Sep. 14, 2011)  
[www.suntimes.com/news/metro/7664408-418/tennessee-lawyers-want-state-supreme-court-to-take-a-new-look-at-whether-one-of.html](http://www.suntimes.com/news/metro/7664408-418/tennessee-lawyers-want-state-supreme-court-to-take-a-new-look-at-whether-one-of.html)

The **Kentucky Commission** publicly reprimanded Judge Daniel Ballou for sending an e-mail with materials for Rand Paul’s campaign for U.S. Senate to all Kentucky circuit judges and to more than 50 other addresses. According to news reports, the judge told the Commission that he had “forwarded an email from his personal computer to a limited number of fellow judges, none of whom could be reasonably expected to be subject to improper political persuasion or influence.” The reprimand notes that the Commission dismissed two other counts, one of which alleged that the judge contributed \$562 to John McCain’s 2008 presidential campaign by buying several items with McCain’s likeness on the Internet, which he did not know would be considered a political donation. (September 7, 2011).

The **New Jersey Advisory Committee on Judicial Conduct** filed a formal complaint alleging that Judge James Curcio signed a letter as “host committee chairman” inviting supporters of a Republican Party nominee for State Assembly to a fund-raising event at a restaurant.

The **West Virginia Judicial Investigation Commission** publicly admonished Judge John Yoder for failing to preside over, and **delegating to his law clerk** responsibility for presiding over, two hearings on name change petitions. Rejecting his arguments, the Commission emphasized that “It is the judge and not his law clerk, who is the arbiter of facts and law for the resolution of name change request.” The Commission also stated that “the name change petitions were not necessarily ‘routine.’” And that “Judge Yoder does not understand that he harmed the public trust and confidence in the judicial system by assigning his authority and responsibility to his law clerk.”

(September 2011).

"[T]he judge who first oversaw **Casey Anthony's** murder trial is leaving the bench altogether. Circuit Judge Stan Strickland is also the same judge who sentenced Casey to jail time and probation for her check fraud charges. Why is Strickland stepping down? In a word, he said he's "weary." Strickland is leaving the bench a year early after serving 16 years. He sent his resignation letter to the governor effective Dec. 31. The letter didn't state why Strickland was stepping down. But his counselor, attorney Bill Sheaffer, who is our legal analyst, said the judge has had enough. . . . "Strickland recused himself from Casey Anthony's murder and check fraud cases after her lawyers accused him of befriending a blogger, and of disparaging the jury that acquitted her of murdering her daughter Caylee on **Nancy Grace's** show. "You learn to live with surprises. I've just never seen one like this and the magnitude of it surprises me. I guess I'm just shocked. We opened up a big can of justice, didn't we?" Strickland said on Grace's show.

"After making that comment, he corrected his sentencing order for Casey's check fraud convictions and forced her to serve one year probation even though she was freed after her murder acquittal. Now, there's talk that his appearance on Grace's show has led to a **Judicial Qualifications Committee** complaint against the judge. "We are certainly prepared that should they want to press that point, we are going to defend his right to make the comments he's made vigorously," Sheaffer said."

(Oct. 17, 2011 WFTV.com)

[www.wftv.com/news/news/casey-anthony-judge-stan-strickland-resign/nFH6F/](http://www.wftv.com/news/news/casey-anthony-judge-stan-strickland-resign/nFH6F/)

The **Massachusetts Commission on Judicial Conduct** initiated a complaint against a judge who had been interviewed on a local television news program about an issue of concern to the courts and the public, arguably creating the appearance that the judge might have been commenting publicly about a particular pending case and might not be impartial if that issue or case came before him.

The judge explained how the interview came about, what his intentions and understanding were, and how the final piece was edited. Although it **dismissed the complaint**, the Commission expressed its concern that a judge must "be mindful that, while a judge is permitted to speak with the media, a judge should be aware of the possibility that statements made to reporters, even when well-intentioned, can be reported in a manner that harms public confidence in the integrity and impartiality of the judiciary."

News reports indicate that **Michigan Supreme Court Justice** Brian Zahra was the keynote speaker at a local meeting of the Tea Party Movement and will judge an upcoming student essay contest sponsored by the Tea Party with Judge David Reader and others.

**The Texas Lawyer** obtained a copy of an **e-mail** Chief Judge Edith Jones of the 5th U.S. Circuit Court of Appeals sent to U.S. District Judge Sam Sparks of the Western District of Texas. The e-mail stated: "Dear Sam, It has not escaped my attention, or that of my colleagues or, I am told, nationally known blog sites that you have issued several 'cute' orders in the past few weeks. . . . Frankly, this kind of rhetoric is not funny. In fact, it is so caustic, demeaning, and gratuitous that it casts more disrespect on the judiciary than on the now-besmirched reputation of the counsel. It suggests either that the judge is simply indulging himself at the expense of counsel or that he is fighting with counsel in what, as Judge Gee used to say, is surely not a fair contest. It suggests bias against counsel. No doubt, none of us has been consistently above reproach in our professional communications with counsel. We are all prone to human error. But no judge who writes an order should allow such rhetoric to overcome common sense. Ultimately, this kind of excess, as I noted, reflects badly on all of us. I urge you to think before you write."

Last month, Judge Sparks invited 2 squabbling lawyers to a "kindergarten party" to learn discovery skills and, in another case, called an anti-abortion lawyer who submitted a picture of an aborted fetus as a court exhibit "anything but competent." Judge Jones declined comment on the substance of her e-mail to Judge Sparks but said she was "saddened" that it had been released to others.

The **New Mexico Supreme Court** accepted the stipulated permanent retirement of Judge Wilma Charley in lieu of disciplinary proceedings. The **Judicial Standards Commission** had filed a notice of formal proceedings on September which alleged that the judge demonstrated a pattern of improper absences,

failed to work the 40 hours a week required by statute, and failed to follow rules regarding leave; that her unexcused absences caused great difficulty at the San Juan Court; and that she took official action without legal authority because she had failed to attend required training. (October 12, 2011).

The **Florida Supreme Court** rejected a stipulated recommendation of the **Judicial Qualifications Commission** that Judge Timothy Shea be publicly reprimanded for a pattern of rude and intemperate behavior. The Court stated that it would suspend the judge for 60 days without pay, publicly reprimand him, and require that, during the suspension, he write and mail letters of apology to the individuals identified in the stipulation and continue mental health counseling for his temper. If the parties do not agree to the Supreme Court's proposed sanction, the case will be set for hearing before the Commission.

In **England**, Magistrate Jean Brown has not sat for the past four months during an inquiry into her comments on **Facebook** to a friend. The friend had posted a message on her own Facebook profile page stating she was annoyed at the progress in a family court case. The judge asked "who is dealing with this" and asked for the case number. The judge then posted: "In next week will see what's on file." The judge's Facebook profile has since been deleted.