



February 06, 2006

Dr. Richard Wehmhoefer
Colorado Commission on Judicial Discipline
899 Logan Street, Suite 307
Denver, CO 80203

RE: Inquiry concerning , 1st Judicial District

Dear Dr. Rick:

I have written you on two or three occasions since 2000 regarding the above-captioned judge. In each of your replies, you cordially explained that your office does not conduct inquiries into ongoing cases. From the conclusive context of your assertion, I must assume that is true without regard for the nature of the alleged conduct and no matter how severe or outrageous. However, I doubt that a district court's **continuing** jurisdiction under the Uniform Child Custody and Jurisdiction Enforcement Act is a **continuing** bar to this Commission to conduct an inquiry where a complainant's allegations, if proved true, concern the violation of one or more of the judicial Canons.

In this memorandum, I am writing with a limited purpose in mind and specifically relating to a judge's duty to fulfill the duties of the office under Canon 3A. In the particular instance that I am writing about, not less than 18 months has passed since this particular judge has refused to fulfill the aforesaid duty, which has undeniably resulted in the knowing constitutional violation of denial of access to the court. Because of the length of time that has elapsed, I am confident that the prohibition that you alluded to in earlier writings is no longer applicable and, because there is no ongoing case (caused actually and proximately by the judge's inaction, as more fully set forth, *infra*).

In August of 2004, I filed a Motion for Substitution of Judge (hereinafter, “recusal motion”). The Colorado Supreme Court in *Johnson v. The District Court*, explained that, “[A] request for the disqualification of a trial judge is a most serious undertaking.” 674 P.2d 952 (Colo. 1984). Under Colorado’s Rule 97, a recusal motion has the effect of suspending the proceedings as a matter of law. *See generally* Rule 97. During the pendency of a recusal motion, a judge has no authority in a case other than to decide the pending motion. *City of Trinidad v. District Court*, 196 Colo. 106, 581 P.2d 304 (1978); *People v. Bell*, 658 N.E.2d 1372 (Ill. App. Ct. 1995). A refusal by a judge to decide a recusal motion is germane to an arbitrary decision to halt the proceedings. *Greenberg, Benson, Fisk and Fielder, P.C. v. Howell*, 685 S.W.2d 694 (Tex. Ct. App. 1984) (Trial judge abused his discretion in withholding action on motion for his recusal. A trial judge, when presented with recusal motion, must promptly enter either a recusal order or referral order; he does not have the option of doing nothing. . . . [A] trial judge may not arbitrarily halt trial proceedings).

This tenuous situation has infrequently arisen in Colorado, so there is sparse case law on the subject. However, a series of cases in Florida has addressed the problem to the extent that it contemplates the judge’s motives and concludes that it is conduct that brings disrepute to the bench (thereby implicating Canon 1A & 2A). In *Anderson v. Glass*, the court noted that, “[P]rompt rulings promote public confidence in the impartiality of the trial judge, while delayed rulings, not only slow the litigation process, **but [also] call into question the trial judge’s motives.**” 727 So.2d 1147 (Fla. 5th DCA 1999) [emphasis added].

The fact that I have the “option” to pay a \$225 docket fee to petition the Colorado Supreme Court to issue the rarely-granted writ of *mandamus* does not alter the truth or falsity of this judge’s violation of one or more of the aforesaid Canons and I do not believe that availability divests this Commission of its authority to conduct an inquiry. *See, e.g., Tableau Fine Art Group, Inc. v. Jacoboni*, 853 So.2d 299 (Fla. 2003) (“If a judge takes a motion under advisement for too long a period, a party has a number of options, such as the right to file a petition for a writ of *mandamus* to compel a ruling by the trial judge. . . [However, **a] litigant who files a motion**

for disqualification should not be required to file a petition for a writ of mandamus to compel a trial judge to provide a ruling on the motion.”) [emphasis added]; *see also G.C. v. Department of Children and Families*, 804 So.2d 525 (Fla. 5th DCA, 2002) (“We are . . . troubled by the remedies suggested . . . : either send a gentle reminder to the judge or apply for a writ of mandamus. Neither of these is a burden that should be placed on the movant. . . the litigant should not be required to nudge the judge. Nor is it a right to require a party to file a petition for writ of mandamus. . . The *Anderson* panel recognized that once a judge has placed a movant in the position of having to file a petition for writ of mandamus just to get a ruling on a motion, the loss of confidence in the fairness of the trial judge is irreparable”); *see also Hines v. D'Artois*, 531 F2d 726 (5th Cir. 1976) (“Whatever the absolute judicial validity of the above sources of information, it seems beyond cavil that **the effect of the stay order in this case was to put plaintiffs ‘effectively out of court,’ for a protracted and indefinite period—at least eighteen months, and possibly much longer.** For the purposes of expedition and certainty, the parties here would have been served just as well by a stay pending the arrival of Godot”) [emphasis added] (quoting *Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 715 n.2 (1962) (the Supreme Court noted (in remanding on other grounds, that: "(a)ppellant was effectively out of court”).

In this instance, Judge [REDACTED] acknowledged that [REDACTED] dilatoriness was suspending the proceedings. H [REDACTED] order dated February 10, 2005 stated, “this Motion not be reviewed until the pending recusal motion is decided; the Court will hold this Motion in abeyance.” Indeed, none of my motions have been decided during the time since August of 2004, yet several applications for relief by other parties and non-parties to the case have been entertained by this trial judge.

CONCLUSION

Without regard for the trial judge's motives or attempts to "unlawfully" confer or waive jurisdiction upon the trial court, all motions properly put before a tribunal—not just recusal motions—require a decision on the merits. *US East Telecommunications v. US West Inf. Sys.*, 15 F.3d 261 (2nd Cir. 1994) ("A Court confronted by a motion authorized by the Rules must decide the motion within a reasonable time.") (citing *Hudson v. Parker*, 156 U.S. 277, 288, 39 L. Ed. 424, 15 S. Ct. 450 (1895)). However, recusal motions, by their very nature and because of their legal effect under Rule 97, create an especial obligation for a trial judge. A trial judge's refusal to decide a pending recusal motion for 18 months, not only implicates Canon 3A, but also 1A and 2A. Accordingly, I respectfully request that this Commission conduct an inquiry.

...with kind regards,

