



January 4, 2007

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

RE: failure of Judge [REDACTED] to rule on recusal motion

Dear Dr. Rick:

I first alerted you in February of 2006 that the above-captioned district judge had refused to rule on a pending recusal motion. I provided you with irrefutable evidence from the Commission's Annual Report, published in the Colorado Lawyer, that the failure to discharge duties of a judicial office (such as ruling on motions) pursuant to Canon 3A and Colo.Rev.Stat. § 13-5-135 was among the few reasons that the Commission had exercised its disciplinary jurisdiction. I've also explained to you that the district court has refused to exercise jurisdiction in my case for over two years.

Disregarding these latter allegations, you have written me repeatedly to inform me that the Commission is not an appellate court and that you cannot become involved in an ongoing case. I want to take this opportunity, for at least a third time, to inform you that:

- (1) this case is no longer "ongoing." It was effectively terminated in August of 2004. *See, e.g., Hines v. D'Artois*, 531 F.2d 726, 731-32 (5th Cir. 1976) ("the effect of the stay order . . . was to put plaintiffs 'effectively out of court,' for a protracted and indefinite period-at least eighteen months, and possibly much longer") (quoting *Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 715 n.2 (1962); *see also, Muhammad v. Warden, Baltimore City Jail*, 849 F.2d 107, 110 (4th Cir. 1988) (an extended state of suspended animation effectively ends the litigation); *St. John v. International Ass'n of Machinists and Aerospace Workers, Local # 1010*, 139 F.3d 1214, 1216-17 (8th Cir. 1998); *Crystal Clear Communications, Inc. v. Southwestern Bell Tel. Co.*, 415 F.3d 1171, 1175 (10th Cir. 2005).
- (2) Contrary to your assertion, the Commission *does* indeed become involved in ongoing cases, as evidenced by an excerpt from one of your annual reports, enumerating reasons for exercising disciplinary jurisdiction during the prior year:

- Engaged in *ex parte* contacts with litigants or attorneys in **cases pending before the judges**, violations of Canons 1, 2A. and B., and 3A.(4), Colorado Code of Judicial Conduct.
 - Delayed issuing **decisions in cases pending before the judges**, violations of Canon 3A.(5), Colorado Code of Judicial Conduct.
 - Experienced losses of temper or control with litigants or attorneys **in cases pending before the judges**, violations of Canons 1, 2A. and B., and 3A.(3), Colorado Code of Judicial Conduct.
 - Made inappropriate remarks about the conduct of an attorney to the media, a violation of Canons 1 and 3A.(6), Colorado Code of Judicial Conduct.
 - **Heard a case** involving an individual who was a client of the part-time judge's law firm, a violation of Canons 1, 2A. and B., 3C.(1)(a), (b), and (c), 8B.(7), and 8C.(1) and (3), Colorado Code of Judicial Conduct.
 - Became intemperate and verbally abusive toward an employee and customer of a business establishment, a violation of Canons 1 and 2A. and B., Colorado Code of Judicial Conduct.
 - Pled guilty to driving while the judge's ability was impaired by alcohol, a violation of Canons 1 and 2A., Colorado Code of Judicial Conduct.
 - Was found to have sexually harassed an employee of the judge, a violation of Canons 1 and 3A.(3), Colorado Code of Judicial Conduct.
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Pursuant to Colo.Rev.Stat. § 13-5-136, I request that the judge's salary be withheld for her refusal to rule on the pending recusal motion since August of 2004. Because I first informed the Commission of this in February of 2006, the request should be considered timely filed in February of 2006 for the purposes of satisfying subs. (1)(1) of 13-5-136 (C.R.S.).

Finally, I was planning on publishing all of my memoranda to and from you in my case and other cases on a Web site, www.knowYourCourts.com. In light your treatise on the subject of confidentiality, it occurred to me that I would not run afoul of the statute, so long as I redact the name[s] of the judge[s]. I believe that the public has a right to know what the Commission does (and does not do) and I believe that I have a First Amendment right to provide that revelation to the public. Although I am not asking for legal advice, I am asking if you would request that I refrain from posting the memoranda (even with the names redacted) and, if so, upon what basis (statutory or otherwise) that you would make such request.

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