

Lawyer's motives questioned after judge's recusal

Publication: Chicago Sun-Times (IL)

Date: June 3, 2004

Author: Abdon M. Pallasch

Section: NEWS

Page: 19

Word Count: 542

Did lawyers for one side of a case hire the judge's former law partner just so the judge would recuse himself?

It doesn't matter -- it "just simply looks bad," Dorothy Kirie Kinnaird, presiding judge of the Cook County Circuit Court's Chancery Division, wrote in a rare order knocking attorney Myron "Mike" Cherry off a case.

Cherry is a heavyweight fund-raiser for Democrats such as former President Bill Clinton and 2004 presidential candidate John Kerry.

Kinnaird found Cherry's 11th-hour entry into the case of Yvonne DiMucci vs. Anthony DiMucci suspicious because the judge in the case, Peter Flynn, practiced law with Cherry for 23 years as the firm of Cherry & Flynn. And Cherry's entry into the case just two days after Flynn ruled against Anthony DiMucci on some motions prompted Flynn to recuse himself. Yvonne DiMucci's lawyers suggested that could have been the goal of Anthony DiMucci's attorneys. Yvonne alleges her brother-in-law, Anthony, froze her out of a business in which he and her late husband, Salvatore DiMucci, were equal partners. The case has dragged on for six years.

"The court believes that the filing of the appearance by Mr. Cherry under the circumstances of this case constitutes the appearance of impropriety and that no objective, disinterested observer would perceive otherwise," Kinnaird wrote. "This court is specifically not finding that Mr. Cherry entered the case in order to force Judge Flynn's recusal or in an attempt to incur favor with him."

However, Kinnaird wrote, given that Flynn recused himself the last time Cherry was on a case, "a persuasive argument can be made that . . . Mr. Cherry should have known that such a recusal would occur."

Kinnaird called it "egregious" for Cherry to file his appearance on behalf of Anthony DiMucci without getting Flynn's permission, a sentiment echoed by other Chancery Court judges.

Judges rarely, if ever, refuse to allow an attorney to join an existing legal team for a case, unless there appears to be some conflict of interest, as charged in this case. Cherry did not appear in court to file his appearance as Kinnaird said is the custom. Rather, he sent Flynn a copy of the notice that he was joining the case.

"This court has never seen or heard of a situation in the Chancery Division where an attorney has filed an appearance without leave of court and then sent a copy of that appearance by messenger directly to the judge," Kinnaird wrote. Kinnaird's solution was to strike Cherry's appearance from the record and transfer the case back to Flynn. Cherry can seek Flynn's leave to join the case. She ascribes no "ill motive" to Cherry or anyone else in the case.

Cherry respectfully disagrees with Kinnaird's ruling, saying the law allows anyone to have the attorney of his choice. Cherry's reading of the law is backed by Northwestern University Law Professor Steve Lubet and former Cook County Judge Brian Crowe, who authored an affidavit served on the court.

The law further states that a judge need only recuse himself for three years after practicing with a lawyer. Flynn left Cherry's firm five years ago. Kinnaird said some Chancery Court judges continue to recuse themselves from cases involving their old firms 20 years after leaving them.