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Caroline C. Emery

July 8, 1993

Sid J. White
Clerk, Supreme Court of Florida
Tallahassee, FL 32399-2300

81,685

FILED
SID J. WHITE
JUL 12 1993
CLERK, SUPREME COURT
Chief Deputy Clerk

Re: *Proposed changes to the Code of Judicial Conduct*

Dear Mr. White:

There are two issues which I feel are important enough to require my time to inform you about, and your time to consider. I thank you for the opportunity to express my concerns.

ISSUE I - Media Coverage

In reviewing the proposed changes to the Code of Judicial Conduct, submitted to the Supreme Court of Florida by the Court's Committee on Standards of Conduct Governing Judges, I noticed that Canon 3A(7), which governed media coverage of judicial proceedings, is being totally deleted.

As a judicial law clerk for the Fourth Judicial Circuit, I recently had the opportunity to research the issue of media coverage in the courtrooms. This came up due to the following incident. A judge was reading jury instructions in the presence of one T.V. station (chosen through a "pooling" arrangement) which was filming the proceedings. All of sudden, a noisy, disruptive cameraman (from another T.V. station) burst through the door, walked up to the swinging doors, and began filming. This amounted to not only a prohibited number of cameramen in the courtroom, but also to a very noisy disruption during an intense part of the trial. In order not to further distract the jury during instructions, however, the judge decided not to put the cameraman into contempt at that time, and later requested me to research his options.

Although the Judicial Administrative Rule 2.170, which became effective recently (in January, 1993), is practically identical to Canon 3A(7), there is a crucial difference between the two which makes Canon 3A(7) imperative, and, if deleted, will take the bite out of any express regulations concerning media coverage. More specifically, Canon 3A(7) has a Commentary which gives the media permission to cover public judicial proceedings "subject at all times" to the authority and control of the presiding judge.

Canon 3A(7), Judicial Administrative Rule 2.170, and the case law, is based on a false assumption that the media is "courteous, cooperative and willing to comply with reasonable rules of decorum." See eq., In re Adoption of Proposed Local Rule 17, 339 So.2d 181, 185 (Fla. 1976). Thus, there are no express provisions for sanctions in the event the media does violate the rules. Other than the Commentary to 3A(7), which is about to be deleted, there are no express guidelines for a judge in the event the media fails to comply with the rules. It is difficult for a judge who is faced with the media's noncompliance to determine an appropriate sanction since there is such a strong recognition of the competing interest in freedom of the press in our society.

To delete Canon 3A(7) would be to purge the one express provision that empowers the judge with authority to control the media to ensure decorum and prevent distractions in the courtroom. Instead of deleting this, it should probably be amended to add provisions to instruct the judge on steps to be taken should the media abuse its permitted attendance.

ISSUE II - Judge's Knowledge

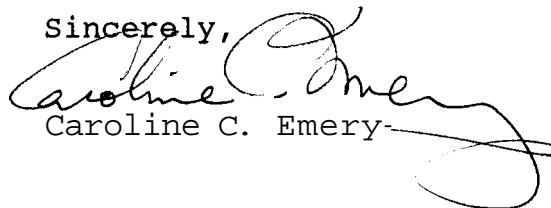
Once in a while, the court shuffles judges around from one division to another. For example, a judge may be permanently transferred from the criminal to the civil division.

There seems to be no prerequisite to ensure that a judge who is moved in such manner is qualified in the area that he is about to cover. There should be conditions such as requiring a judge to attend a judicial refresher course in the area that s/he is being transferred to. At this time, there seems to be no such provisions or requirements. As a consequence, our law clerk's office has been explaining *basics* to certain judges who were recently transferred. To cite only a few examples, the clerks have had to explain the difference between the necessary "proof" for motions to dismiss as opposed to motions for summary judgment, the elements of negligence, special damages versus general damages, and how foreseeability plays a part in causation.

It is unsettling that a judge may be transferred from one division to another without any precautionary device in the system to ensure the judge's competence in such area before s/he is assigned. This is not meant to reflect on the judges' intelligence or competence as a judge generally, but rather as a judge in the area s/he is assigned to.

Again, thank you for taking the time to consider my views on these matters.

Sincerely,


Caroline C. Emery