2006-30 (23)

The Commonwealth of Massachusetts
COMMISSION ON JUDICIAL CONDUCT
11 BEACON STREET SUITE 525
BOSTON, MASSACHUSETTS 02108
(617) 725-8050
FAX (617) 248-9938
WWW.MASS.GOV/CJC

June 26, 2007

The Honorable Ernest B. Murphy
41 Glenn Street
Dover, MA 02030

CONFIDENTIAL

Re: Complaints Nos. 2006-9 and 2006-30

Dear Judge Murphy:

Following your written response to the Statement of Allegations in the above-entitled matter, the Commission found sufficient cause to issue Formal Charges. Formal Charges are hereby issued; a copy is enclosed.

Please take note that, according to G.L. c.211C, sec. 5(14), you are provided ten days after receiving these Formal Charges in which to file your written response with the Commission. Immediately thereafter, a copy of the Formal Charges and of your response shall be filed with the Supreme Judicial Court and shall cease to be confidential. The Supreme Judicial Court will then appoint a hearing officer for a public hearing.

If you need any further information, your attorney is welcome to phone me or Staff Attorney Devlin Farmer at 617-725-8050.

Sincerely,

Gillian E. Pearson
Executive Director

Enclosure
cc: Michael E. Mone, Esq.

Certified Mail
Return Receipt Requested

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

Complaint Numbers 2006-9 and 2006-30

FORMAL CHARGES

The Commission on Judicial Conduct ("the Commission"), acting pursuant to M.G.L. c. 211C, § 5(14) and Commission Rule 7B(4), hereby notifies the Honorable Ernest B. Murphy ("Judge Murphy"), Associate Justice of the Superior Court Department, that it has found sufficient cause to issue Formal Charges in the above-numbered matter.

These charges grew out of the investigation of a complaint initiated by the Commission on January 10, 2006 and the investigation of a complaint filed on February 17, 2006 by the *Boston Herald*. As a result of these investigations, on April 17, 2007, the Commission issued a Statement of Allegations pursuant to M.G.L. c. 211C, § 5(5). Judge Murphy received the Statement of Allegations on May 3, 2007. Judge Murphy's response to the Statement of Allegations was filed with the Commission on May 9, 2007 by his attorney, Michael E. Mone. Judge Murphy declined to appear before the Commission, pursuant to M.G.L. c. 211C, § 5(7).

The Commission also hereby notifies Judge Murphy that, pursuant to M.G.L. c. 211C, § 5(14) and Commission Rule 7B(4), he has ten (10) days after service of these Formal Charges in which to file a written response with the Commission. The response should set forth in concise language all denials, affirmative defenses, and any other matters upon which Judge Murphy intends to rely at the hearing on these charges. Immediately after the filing of Judge Murphy's response or the expiration of the ten days, a copy of the Formal Charges and of Judge Murphy's response shall be filed with the Supreme Judicial Court. Upon this filing, the confidentiality of the Formal Charges and the response thereto shall cease.

The Commission alleges that Judge Murphy has engaged in willful misconduct which brings the judicial office into disrepute, as well as conduct prejudicial to the administration of justice and unbecoming a judicial officer. This misconduct includes: failure to maintain and observe high standards of conduct in violation of Canon 1A of the Code of Judicial Conduct (Supreme Judicial Court Rule 3:09); failure to avoid impropriety and the appearance of impropriety in violation of Canon 2; failure to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A; lending the prestige of judicial office to advance his own private interests in violation of Canon 2B; failure to conduct extra-judicial activities so that they do not cast doubt on the judge's capacity to act impartially as a judge in violation of Section 4A(1) of Canon 4A; and failure to refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with his judicial

position or that may be reasonably perceived to exploit his judicial position in violation of Section 4D(1) of Canon 4D.

The Commission specifically alleges that:

1. On June 3, 2002, Judge Murphy filed a libel suit against the *Boston Herald* and its employees David Wedge, Jules Crittenden, Margery Eagan and David Weber in Suffolk Superior Court.

2. On February 18, 2005 the jury returned a verdict in favor of Judge Murphy against the *Boston Herald* and David Wedge only for $2,090,000. On October 19, 2005, after the defendants filed a motion for judgment notwithstanding the verdict, this amount was reduced by the trial judge to $2,010,000.

3. Judge Murphy used official Superior Court letterhead to handwrite a letter addressed to Patrick J. Purcell, Publisher of the *Boston Herald*, dated February 20, 2005, regarding his personal litigation (Appendix A).

4. Judge Murphy used official Superior Court letterhead to handwrite a post-script to the letter dated February 20, 2005, which he dated February 19, 2005, regarding his personal litigation (Appendix B).

5. Judge Murphy enclosed the letter dated February 20, 2005 and its post-script dated February 19, 2005 in a Superior Court envelope on which he handwrote "Murphy, J." above the printed return address. Judge Murphy mailed this envelope (Appendix C) to Patrick Purcell at the *Boston Herald*, One Herald Square, Boston, Massachusetts.

6. Judge Murphy wrote another letter to Patrick J. Purcell regarding his personal litigation, dated March 18, 2005 (Appendix D), which he enclosed in an official court stationery envelope (Appendix E). On the envelope Judge Murphy crossed out "Walter F. Timilty, Clerk of Courts" and handwrote "Murphy, J. Superior Court" above the Norfolk County court return address. He mailed it to Patrick Purcell at the *Boston Herald*, One Herald Square, P.O. Box 55843, Boston, Massachusetts.

7. On December 20, 2005, copies of Judge Murphy's letter dated February 20, 2005, postscript dated February 19, 2005 and letter dated March 18, 2005 were filed in Suffolk Superior Court in support of a motion by the defendants in *Ernest J. Murphy v. Boston Herald, Inc. and David Wedge et al.* to vacate the judgment and dismiss the complaint. On December 21, 2005 the *Boston Herald* published excerpts from these letters in the print edition of the *Boston Herald* and published the entire letters on their website. Copies of the December 21, 2005 *Boston Herald* articles are reproduced as Appendix F.

The conduct set forth above, if true, constitutes conduct prejudicial to the administration of justice and unbecoming a judicial officer, brings the judicial office into disrepute, and violates the Code of Judicial Conduct.

For the Commission,

Robert J. Guttentag
Chairman

Date: June 26, 2007

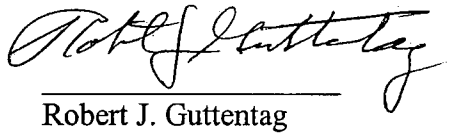
NOTICE OF DISCOVERY RIGHTS PURSUANT TO FORMAL CHARGES

Complaint Nos. 2006-9 and 2006-30

The Commission hereby notifies Judge Ernest B. Murphy that, pursuant to Commission Rule 9A, the Commission shall, within a reasonable time, make available for inspection upon the written request of the judge all books, papers, records, documents, electronic recordings, and other tangible things within the custody and control of the Commission which are relevant to the issues of the disciplinary hearing, and any written or electronically recorded statements within the custody and control of the Commission which are relevant to the issues of the disciplinary proceeding. The failure of the Commission to furnish timely any such materials provided for herein shall not affect the validity of any proceedings before the Commission, provided that such failure is not substantially prejudicial to the judge.

As specified in Commission Rule 9C, nothing in this Notice of Discovery Rights shall be construed to require the discovery of any report made to the Commission by its staff or Special Counsel. Furthermore, in granting discovery the Commission shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of its staff, Special Counsel, or other representative.

For the Commission,



Robert J. Guttentag
Chairman

Date: June 26, 2007

Appendix A

COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT
BOSTON, MA 02109

ERNEST B. MURPHY
ASSOCIATE JUSTICE

2/20/05

Dear Pat,

I trust you continue (as do I) to honor the privacy of our personal communications in the nature of what is generically referred to as "settlement discussions" in my business.

As you no doubt clearly recollect, de Mike Ditka here warned you against playing "the Team from Chicago" in this particular Super Bowl.

Well, you know, I don't walk around telling that story. I just think it's sad I had to prove it to you. Took a lot out of me.

The reason I write now is that I think you a smart and honorable guy. And since every single thing I told you about what was going to happen in this case thusfar, has happened; maybe, just maybe, I have some credibility with you at this point.

So, here's the deal. I'm heading off to St. Maarten, and I'll be back in town, for business purposes, on Monday, March 7. I will be checking my e-mail [bigemuss@aol.com] while I'm down there.

I'd like to meet you at the Union Club on Monday, March 7. (No magic to the date.) (But it needs to be early in that week.)

Here's what will be the price of that meeting. You will have <u>one</u> person with you at the meeting. I suggest, but do not insist, that such a person be a highly honorable and sophisticated lawyer from your insurer.

Under <u>NO</u> circumstances should you involve Brown, Rudnick

in this meeting. Or notify that firm that such a meeting is to take place.

I will have my attorney (either Owen Todd or Howard Cooper) at the meeting. The meeting will be AB-SO-LUTE-LY confidential and "off the record," between four honorable men.

You will bring to that meeting a cashier's check, payable to me, in the sum of $3,260,000. No check, no meeting.

You will give me that check and I shall put it in my pocket.

I will say to you, if, at the end of this meeting, you can stand before the God of your understanding, and as a man of honor, ask for the return of that check, I'll flip it back to you.

And then, I shall explain to you why it is in your distinct business interest to rise from the table, shake my hand, and let me walk away with that check.

Because it is, Mr. Purcell, in your distinct business interests to do so, in my considered opinion; and I have not the slightest apprehension of failure of my ability to make you (and your mariner) concur in that assessment.

Sincerely,

Eric Mapp

Appendix B

COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT
BOSTON, MA 02109

ERNEST B. MURPHY
ASSOCIATE JUSTICE

2/19/05

P.S. If you conclude you have no interest in the meeting I propose, I ask that you throw the letter away and pretend it never was received. I am NOT copying this letter to anyone. I consider it private settlement discussion between principals to a transaction, and I assure you it provides you with no tactical or strategic advantage in the case.

Else, Mr. Purcell, you probably recognize by now, it would never have been written.

I am simply trying to exit this matter NOW, to my maximum advantage, and what I believe, Pat, is yours as well.

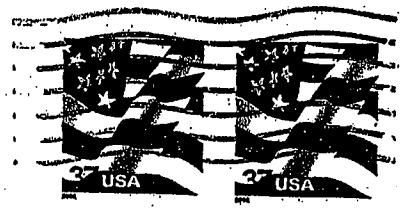
It would be a mistake, Pat, to show this letter to anyone other than the gentleman whose authorized signature will be affixed to the check in question.

In fact, a BIG mistake. Please do not make that mistake.

Appendix C

Murphy, J.
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT
40 THORNDIKE STREET
CAMBRIDGE, MASSACHUSETTS 02141

PROVIDENCE RI



PERSONAL
&
CONFIDENTIAL

Mr. Patrick Purcell
Publisher
The Boston Herald
One Herald Square
Boston, MA 02118

02118+2257

Appendix D

3/18/05

Dear Pat,

Read the article in the Globe today. Believe me, I take no joy from your troubles.

I'm going to, once again, principal to principal, as "settlement negotiations" – off the record – just between you and me – tell you something which may help you in your decision-making. Something for nothing.

And that is .... you have a ZERO chance of reversing my jury verdict on appeal.

Anyone who is counselling you to the contrary ... is WRONG. Not 5% .... ZERO.

AND .... I will NEVER, that is as in NEVER, ehave a dime from what you owe me.

You and/or your manner want to pay me $331,056/yr for the next two or three years while you spend another 500 large tilting at windmills in the appellate courts .... be my guest.

You are lucky, Mr. Purcell that that jury came back at 2 million. I was betting on 5.

Eric

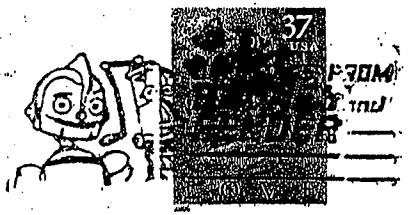
Appendix E

Murphy, J.

~~WALTER F. TIMILTY~~
~~CLERK OF THE COURTS~~
Superior Court
Norfolk County
650 High Street
Dedham, MA 02026-1855

PERSONAL
<
CONFIDENTIAL

BROCKTON MA 023
18 MAR
2005



Mr. Patrick Purcell
Publisher, Boston Herald
One Herald Square - PO Box 55843
Boston, MA 02205-5843

02205+5843

Appendix F

Paper: Boston Herald (MA)
Title: Herald: Toss libel verdict
Claims judge trying to 'bully' paper into ceding right to appeal
Date: December 21, 2005

The Boston Herald yesterday asked the Suffolk County Superior Court to toss a $2 million libel verdict Judge Ernest B. Murphy won last February - claiming Murphy subsequently attempted to "bully the Herald" into abandoning its rights to appeal.

In court papers filed yesterday, Herald lawyers said Murphy sent threatening letters to Herald Publisher Patrick J. Purcell in a continuing campaign to intimidate the Herald into giving up its constitutional right to an appeal, and giving Murphy more money than he was awarded at trial.

To back that claim, lawyers attached as exhibits letters that Murphy, a Superior Court judge, wrote to Purcell starting shortly after the trial ended - including hand-written missives penned on Superior Court letterhead.

"So here's the deal," Murphy wrote in a letter to Purcell dated Feb. 20, just two days after the verdict. "I'd like to meet with you at the Union Club on Monday, March 7 . . . Here's what will be the price of that meeting. You will have one person with you at the meeting."

Murphy went on to suggest that Purcell bring a "highly honorable and sophisticated lawyer" from his insurance company, but ordered Purcell not to involve the Herald's law firm, Brown Rudnick.

"You will bring to that meeting a cashier's check, payable to me, in the sum of $3,260,000," the letter continued. "No check, no meeting." Murphy said he would explain why it was in Purcell's "distinct business interest to rise from the table, shake my hand, and let me walk away with that check." In a p.s., Murphy warned Purcell that it would be a mistake "to show this letter to anyone" other than those signing the check. "In fact, a BIG mistake." Please do not make this mistake."

One month later, following a report in The Boston Globe about cost cutting at the Herald, Murphy sent another letter to Purcell in a bid to restart settlement talks. Murphy wrote "you have a ZERO chance of reversing my jury verdict on appeal. Anyone who is counselling (sic) you to the contrary . . . is WRONG. Not 5% . . . ZERO."

In an affidavit filed with the court, Purcell said he perceived Murphy's letters to be "an attempt to coerce a settlement or otherwise intimidate the Herald not to exercise its right to appeal."

Purcell said he didn't know Murphy prior to the judge's initial lawsuit, which was filed in 2002 and stemmed from a series of Herald stories about Murphy's sentencing practices, including a story that said he demeaned a young rape victim. Purcell said he met with Murphy twice between the time the suit was filed and the time it went to trial.

Murphy's trial lawyer, Howard Cooper, could not be reached for comment.

Bruce W. Sanford, the Herald's appellate lawyer, said Murphy's letters, coupled with his asking a Suffolk Superior judge last month to freeze Herald assets, "demonstrates a clear pattern of inappropriate conduct."

"The Judge's letters are a stark and sad attempt to bully the Herald into abandoning its constitutional rights and give him more money than he was awarded at trial," Sanford said.

Herald lawyers also filed documents opposing Murphy's request to block the Herald from disbursing funds in bank accounts, saying Murphy had shown no grounds for such a drastic measure. In court papers, the Herald stated that there is no basis for Murphy's suggestion that the paper has insufficient assets to pay a final judgment.

Indeed, court papers state, the Herald's insurance policy with Mutual Insurance Co. - the same company used by most of North America's 30 largest newspapers - has limits of $15 million.

Even factoring in all legal costs and interest through a two-year appeals process, that amount would exceed the judgment "by several multiples," wrote Jerome C. Schaefer, president of Mutual Insurance, in an affidavit.

GRAPHIC: JUDGE FOR YOURSELF . . .

The following are excerpts of letters written by Judge Ernest B. Murphy to Herald Publisher Patrick J. Purcell.

** 2/20/05

So, here's the deal. I'm heading off to St. Maarten, and I'll be back in town, for business purposes, on Monday March 7. I will be checking my e-mail while I'm down there.

I'd like to meet you at the Union Club on Monday, March 7. (No magic to this date.) (But it needs to be early in that week)

Here's what will be the price of that meeting. You will have one person with you at the meeting. I suggest, but do not insist, that such a person be a highly honorable and sophisticated lawyer from your insurer.

Under NO circumstances should you involve Brown, Rudnick in this meeting. Or notify that firm that such a meeting is to take place.

I will have my attorney (either Owen Todd or Howard Cooper) at the meeting. The meeting will be AB-SO-LUTE-LY confidential and "off the record" between four honorable men.

You will bring to that meeting a cashier's check, payable to me, in the sum of $3,260,000. No check, no meeting.

You will give me that check and I shall put it in my pocket.

I will say to you, if, at the end of this meeting, you can stand before the God of your understanding, and as a man of honor, ask for the return of that check, I'll flip it back to you.

And then, I shall explain to you why it is in your distinct business interest to rise from the table, shake my hand, and let me walk away with that check.

Because it is, Mr. Purcell, in your distinct business interests to do so, in my considered opinion; and I have not the slightest apprehension of failure of my ability to make you (and your insurer) concur in that assessment.

Sincerely,

Ernie Murphy

** 2/19/05

P.S. If you conclude you have no interest in the meeting I propose, I ask that you throw the letter away and pretend it never was received. I am NOT copying this letter to anyone. I consider it private settlement discussion between principals to a transaction, and I assure you it provides you with no tactical or strategic advantage in the case.

Else, Mr. Purcell, you probably recognize by now, it would never have been written.

I am simply trying to exit this matter NOW, to my maximum advantage, and what I believe, Pat, is yours as well.

It would be a mistake, Pat, to show this letter to anyone other than the gentleman whose authorized signature will be affixed to the check in question.

In fact, a BIG mistake. Please do not make that mistake.

E

** 3/18/05

Dear Pat,

I'm going to, once again, principal to principal, as "settlement negotiations" - off the record - just between you and me - tell you something which may help you in your decision-making. Something for nothing.

And that is . . .you have ZERO chance of reversing my jury verdict on appeal.

Anyone who is counselling you to the contrary...is WRONG. Not 5% . . . ZERO.

AND . . . I will NEVER, that is as in NEVER, shave a dime from what you owe me.

You and/or your insurer want to pay me $331,056/yr for the next two or three years while you spend another 500 large tilting at windmills in the appellate courts . . . be my guest.

You are lucky, Mr. Purcell, that that jury came back at 2 million. I was betting on 5.

Ernie
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Ernie

Author: GREG GATLIN
Section: News

Text of judge's letters

Wednesday, December 21, 2005 - Updated: 08:13 AM EST

2/20/05

So, here's the deal. I'm heading off to St. Maarten, and I'll be back in town, for business purposes, on Monday March 7. I will be checking my e-mail while I'm down there.

More on: **Murphy letters**

Herald: Toss libel verdict: Claims judge trying to 'bully' paper into ceding right of appeal

Gallery of Judge Murphy's letters

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Ernie

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