

COMMONWEALTH OF MASSACHUSETTS

COMMISSION ON JUDICIAL CONDUCT

COMPLAINTS NUMBERS 2006-9 AND 2006-30

STIPULATION OF FACTS

The Commission on Judicial Conduct (the Commission) and Judge Ernest B. Murphy (Judge Murphy) stipulate that the following facts, with their accompanying appendices, are established for purposes of the public hearing in the above numbered complaints. In so stipulating, Judge Murphy denies that the existence of these facts constitutes evidence of misconduct on his part and re-asserts his further answers set forth in his Answer dated July 9, 2007. Judge Murphy and the Commission each reserves the right to make any further argument concerning the matters so established.

1. On June 3, 2002, Judge Murphy filed a libel suit against the *Boston Herald* and its employees David Wedge, Jules Crittenden, Margery Egan 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.

2A. The Supreme Judicial Court affirmed the judgment against the *Boston Herald* and its reporter David Wedge, Murphy v. Herald, 449 Mass. 42 (2007).

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, 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 Devid 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*. Copies of the December 21, 2005 *Boston Herald* articles are reproduced as Appendix F.

7A. The motion just referred to was denied by the trial judge. The denial was affirmed by the Supreme Judicial Court in Murphy v. Herald, 449 Mass. 42, 61.

8. Judge Murphy was appointed an Associate Justice of the Superior Court Department of the Trial Court on August 31, 2000 and has served continuously in that capacity since then.

Dated: 10/4/2007

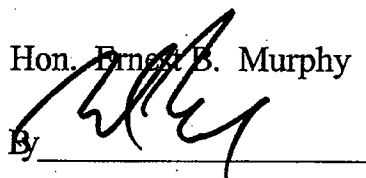
COMMISSION ON JUDICIAL CONDUCT

By



Hon. Ernest B. Murphy

By



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 [bigemunn@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 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 records" 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. Russell, 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 maner) concur in that assessment.

Sincerely,
Ernie Murphy

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. Parcell, 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.

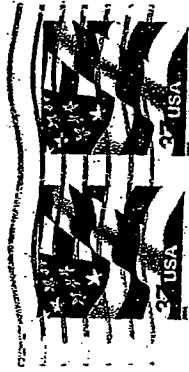
It would be a mistake, Pat, to show this letter to anyone other than the gentleman whose authorized signature will be affixed to the check in question.

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



Appendix C

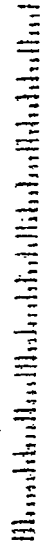
Murphy J.
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT
40 THORNDIKE STREET
CAMBRIDGE, MASSACHUSETTS 02141



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

**PERSONAL
&
CONFIDENTIAL**

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, have 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.

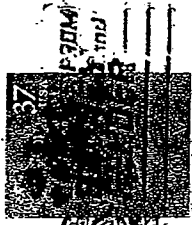
Eric

Appendix E

Murphy, J.

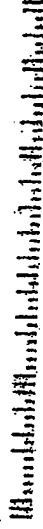


~~MASSACHUSETTS~~
~~COURT OF THE COMMONS~~
Superior Court
Norfolk County
650 High Street
Dedham, MA 02026-1855



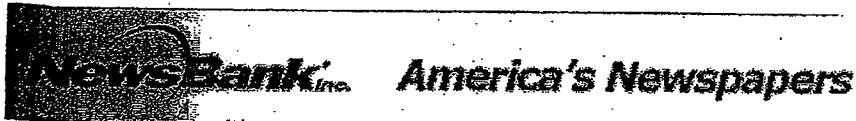
Mr. Patrick Purcell
Publisher, Boston Herald
One Herald Square - PO Box 55843
Boston, MA 02205-5843

0220545843



PERSONAL
CONFIDENTIAL

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 tilling 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
JUDGE FOR YOURSELF . . .

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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

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** 3/18/05

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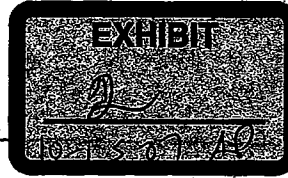
You and/or your insurer want to pay me \$331,056/yr for the next two or three years while you spend another 500 large tilling at windmills in the appellate courts . . . be my guest.

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

Ernie

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Author: GREG GATLIN
Section: News
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EX A

Cooper, Howard

From: Cooper, Howard

Sent: Monday, September 29, 2003 6:25 PM

To: 'dushman@brblaw.com'

Cc: Rich, David H.

Bob - Judge Murphy is available to meet with Pat Purcell any day next week before (8:00 am) or after (4:00 pm) court hours except Thursday. He is willing to go to Pat's office, assuming it is somewhere in Boston. We have agreed that the meeting will not be attended by counsel and will constitute confidential settlement discussions. Please let me know what works with regard to the where and when.

Regards.

Howard

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The Boston Globe

BOSTON HERALD PUBLISHER LOOKS TO CUT COSTS AT PAPER

Author(s): Mark Jurkowitz, Globe Staff Date: March 18, 2005 Page: E1 Section: Business

Boston Herald publisher Patrick J. Purcell will meet with officials of the paper's labor unions Thursday amid widespread expectations that he is looking at making significant cost cuts in the tabloid he purchased from Rupert Murdoch 11 years ago.

Herald staffers said a number of options may be on the table. They include shrinking the size of the paper, reducing staff, and narrowing the Herald's coverage area and focus to Boston and nearby communities. In an interview, Purcell said that "these are all possibilities," and he has asked department heads to look for ways to reduce their budgets.

The Herald's circulation and advertising revenue have been suffering, and the paper has said The Boston Globe's recent acquisition of a 49 percent stake in the Metro Boston newspaper also hurt its ability to compete in the Boston market.

"We are going to be looking for efficiencies across the company," Purcell said. "We're going through a soft patch in the economy. We've had a rough couple of years . . . Whether this suggests a fundamental change in the Herald, I don't think we're at that point yet."

Several union officials said the meeting with the publisher may clear up some of the uncertainty building up at the paper about where the Herald is heading.

"We all understand change is imminent," said Lesley Phillips, president of the Newspaper Guild of Greater Boston, which represents about 280 Herald editorial and commercial employees, who have been operating without a contract since November 2003. "What it is we don't know. We all understand it's important to the future of the Herald."

"Right now, we're in a holding pattern" said newsroom union shop steward Tom Mashberg. "We're waiting for the publisher to meet with union presidents and outline what his vision is for the near future."

The Herald's daily circulation has dropped to 240,759 from about 263,000 four years ago, according to the latest figures on file with the Audit Bureau of Circulations. "You've got fundamental changes taking place with newspaper readership," Purcell said, citing the difficulty in attracting younger readers. The publisher also said that due to "continuing softness in the economy," Herald ad revenue fell in the latest fiscal year.

When The New York Times Co., owner of the Globe, disclosed in January its plan to buy for \$16.5 million a stake in the Boston Metro a free tabloid aimed at younger readers Purcell unsuccessfully tried to persuade the US Department of Justice to block the sale, arguing that the papers' combined circulation and advertising strength would unfairly alter the competitive balance in the market. The purchase closed last week.

Many newspapers are having problems with advertising revenues and circulation and are facing challenges from free papers and the Internet.

"The revenue flow for newspapers, particularly if you're the second newspaper in the market, is questionable," said David Morse, a former assistant publisher of The Christian Science Monitor in Boston. "There's no one in the newspaper industry in markets like Boston who has more ability to enhance revenues and cut costs than Pat. However, the trends are not moving in favor of daily newspapers. I have no doubt that Pat has to look at ways of doing things differently."

The Herald embarked on one significant strategic change in 2003 when Ken Chandler, a former Herald editor, returned to the paper to oversee its transformation to a flashier tabloid. In November of that year, citing the need "to get our bottom line into better shape," Purcell launched a series of layoffs and buyouts that affected 19 employees. Last year, Chandler was named editorial director and editor Andrew Costello and managing editor Andrew Gully who had steered the paper on a newsier, more traditional editorial course departed.

In the past few weeks, the Herald has suffered several setbacks. The Justice Department declined its request to halt the Metro deal. On Feb. 18, a jury awarded \$2.09 million to Judge Ernest B. Murphy, the plaintiff in a high-profile libel case.

JA 0742

against the paper. Purcell said he is "still analyzing" whether to appeal that verdict. Another libel trial against the Herald is scheduled to begin in Barnstable Superior Court on April 19.

At the same time, the Herald newsroom has been rife with rumors about a possible sale of the paper and Purcell's Community Newspaper Co., which includes more than 100 Boston area community and specialty papers. The name that has most frequently surfaced is Hollinger International, which owns the Chicago Sun-Times and more than 100 community papers in the Chicago area.

"The Hollinger rumor is a result of us comparing notes and operations," Purcell said. "Anything else is all speculation."

Mark Jurkowitz can be reached at jurkowitz@globe.com.

[Perform a new search](#)

EX B

Cooper, Howard

From: Dushman, M. Robert [dushman@brownrudnick.com]
Sent: Tuesday, December 20, 2005 12:07 PM
To: Cooper, Howard
Subject: RE: Murphy v. Herald



Sorry for the delay in getting back to you. I have been tied up with some personal matters. We have no objection to meeting, but only if it's likely to lead somewhere. What do you expect would be accomplished by a meeting? I'm going to be out this afternoon, but can speak with you tomorrow or any time after that.

-----Original Message-----

From: Howard [mailto:hcooper@toddweld.com]
Sent: Monday, December 12, 2005 3:50 PM
To: Dushman, M. Robert
Subject:

Bob -

Judge Murphy assents to the motion to admit Attorney Sanford.

Judge Murphy and I would like to meet with you and Mr. Purcell to talk about the appeal. Mr. Sanford of course would be welcome to participate and we would like it if he could be there.

Please let me know if and when this meeting can take place.

Howard

Howard M. Cooper
Todd & Weld LLP
28 State Street, 31st Floor
Boston, MA 02109
Telephone: (617) 720-2626
Facsimile: (617) 227-5777
hcooper@toddweld.com

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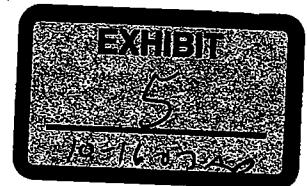
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The information contained in this electronic message may be legally privileged and confidential under applicable law, and is intended only for the use of the individual or entity named above. If the

COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT
BOSTON, MA 02109

ERNEST B. MURPHY
ASSOCIATE JUSTICE

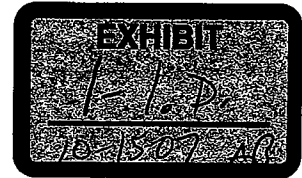
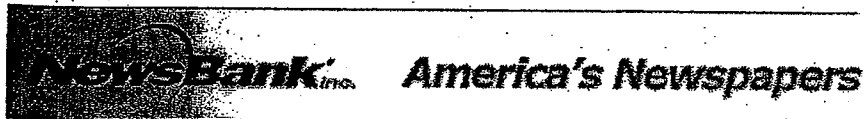


COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT
THREE PEMBERTON SQUARE
BOSTON, MA 02108

COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT
BOSTON, MA 02109

ERNEST B. MURPHY
ASSOCIATE JUSTICE

COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT
BOSTON, MA 02109



Paper: Boston Globe, The (MA)
Title: JUDGE RUES USING COURT STATIONERY IN LIBEL SUIT
Date: December 22, 2005

Superior Court Judge Ernest B. Murphy yesterday publicly apologized for using official court stationery to write a letter demanding that the publisher of the Boston Herald pay him \$3.2 million to end the judge's libel suit against the newspaper.

In a letter to The Boston Globe the day after the Herald complained about what it called bullying by Murphy, the judge said he did not realize it was unlawful to use Superior Court letterhead for the first of two letters he sent to the publisher, Patrick J. Purcell, earlier this year.

"In any event, I hereby publically (sic) and unqualifiedly apologize for the use of my Superior Court stationery (sic) to have written a personal letter to Mr. Purcell" on Feb. 20, Murphy said in the brief letter to the Globe.

Murphy made no apologies for the content of the letters, which a Herald lawyer at a Tuesday news conference called a "stark and sad attempt to bully the Herald" into abandoning its constitutional right to appeal a \$2 million libel verdict awarded to the judge in February.

Bruce W. Sanford, a Washington-based lawyer retained by the Herald to appeal the verdict, said the judge was right to apologize, but Murphy's use of official letterhead was the least of his offenses.

"When judges write letters of the sort that he wrote and I'm talking about the content it erodes public confidence in the fairness of the judiciary and the judicial system, and that, it seems to me, was what his biggest offense was," Sanford said.

The Herald has requested that Boston Municipal Court Chief Justice Charles R. Johnson, who presided at the libel trial, ask the state Commission on Judicial Conduct to investigate whether Murphy violated the Code of Judicial Conduct, Sanford said. The request came in court papers filed Tuesday in Suffolk Superior Court, asking Johnson to throw out the libel verdict.

Johnson said through a spokeswoman yesterday that he could not discuss the case. Jill Pearson, executive director of the commission, declined to say whether a complaint has been filed.

The code of conduct warns judges that "judicial letterhead and the judicial title must not be used in conducting a judge's personal business."

Murphy's battle with the newspaper stems from a series of Herald stories in 2002. The stories, which began with the front-page headline "Murphy's Law," portrayed him as a lenient judge who made inflammatory and insensitive remarks about two crime victims.

On Feb. 18, a Suffolk jury ordered the Herald to pay Murphy \$2.09 million after finding that the paper and its reporter David Wedge had libeled him. Johnson later trimmed the judgment by \$85,000.

As the Herald began preparing its appeal, Murphy last month asked Johnson to bar the newspaper from selling its assets, saying that financial problems at the tabloid threatened to make it impossible for him to collect his libel judgment.

At a news conference at the Boston Harbor Hotel Tuesday evening, Sanford said Murphy's attempt to freeze the Herald's assets would cripple its business. But Sanford also took aim at the two handwritten letters Murphy wrote Purcell on Feb. 20 and March 18.

In the letters, copies of which were filed with a court brief, Murphy proposed a face-to-face meeting with Purcell and a representative of the newspaper's insurance company, and urged Purcell not to inform lawyers at the Herald's principal law firm, Brown Rudnick, that the meeting was taking place.

Murphy suggested that it would be in Purcell's interest to bring a check to that meeting for \$3.2 million, "shake my hand, and let me walk away with that check."

The judge's lawyers have said the award is growing by more than \$26,800 a month because of interest.

Murphy also wrote that the Herald stood "zero chance" of success on appeal and warned Purcell that it would be a "Big mistake" to show one of the letters to anyone except the insurance company lawyers.

But Howard Cooper, a lawyer for Murphy, dismissed as "grossly misinformed" Sanford's contention that the letters were inappropriate. Cooper said Murphy and Purcell met twice before trial to resolve the dispute and agreed to keep lines of communication open.

The Herald's complaints about Murphy's letters, Cooper said, attempt to "divert the public's attention from the fact that a jury of Mr. Purcell's peers found his newspaper repeatedly and with malice libeled Judge Murphy."

Jonathan Saltzman can be reached at jsaltzman@globe.com
PHOTO

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March 23, 2005

BY FAX: 202-293-1640 and
FIRST CLASS MAIL

Jerome C. Schaefer
O'Brien, Butler, McGonihie & Schaefer PLLC
888 Seventeenth Street N.W.
Suite 1000
Washington, D.C. 20006-3967

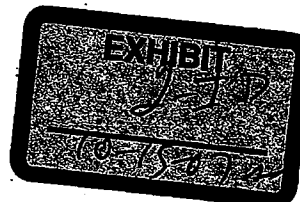
Re: The Honorable Ernest B. Murphy v. Boston Herald, Inc. et al
Insured: The Boston Herald, Herald Media, Inc.
Certificate No. 694-1140 of Group No. 2000cm

Dear Mr. Schaefer:

Thank you for your prompt response to my letter.

You misconstrue my letter. Judge Murphy has no intention of "compromising" the judgment to avoid an appeal. The demand is for payment in full with interest accrued to date and costs. The rationale for the demand is, to state the obvious, the jury verdict and the wisdom we hope the insurer would bring to this situation about avoiding the continued accumulation of interest. The offer to meet was solely so you and your client could hear directly from the plaintiff why there is little chance of the jury's verdict being set aside, since no doubt to date you have heard only from defense counsel (if anyone). There is a track record here in this case, and it is surprising that you would so quickly and cavalierly reject a genuine offer to hear from us. My client, as you know, is a sitting Superior Court judge. I would think you would be interested in what he has to say.

I need send you no more authority to support the applicability of General Laws Chapter 93A and 176D to your client than the statutes themselves and the fact that your client writes insurance for insureds here in Massachusetts as it did in this case. Please forward to me any authority you possess for your position that an insurer can somehow exclude itself from statutory obligations. I note as well that your conclusion that the insuring contract does not create rights for Judge Murphy is incorrect but we need not debate it at the moment given the statements in your letter.



JA 0787

*** TX REPORT ***

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HOWARD M. COOPER
hcooper@toddweld.com

TELECOPY TRANSMITTAL SHEET

No. of Pages Sent: 3 (including this page)
Date: March 23, 2005
To: Jerome C. Schaefer
Fax No.: (202) 293-1640
From: Howard M. Cooper, Esq.
Re: The Honorable Ernest B. Murphy v. Boston Herald
Insured: The Boston Herald, Herald Media, INC.
Certificate No. 694-1140 of Group NO. 2000cm
Remarks: Please see attached.

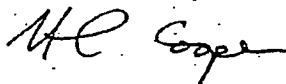
Original to follow by mail.
 No original to follow.

Jerome C. Schaefer
March 23, 2005
Page 2

More disturbing is your refusal to provide any information about the financial wherewithal or rating of your client. You leave us no choice but to consider seeking post-judgment security and discovery. We had hoped to avoid this through a cooperative dialogue.

Please call me if you would like to discuss this matter.

Very truly yours,



Howard M. Cooper

HMC/mt

cc: M. Robert Dushman, Esq.
David H. Rich, Esq.
Judge Ernest B. Murphy