

No. 20107 - In the Matter of Tod J. Kaufman, Judge, Circuit Court
of Kanawha County

Neely, J., dissenting:

I am shocked by the unsporting conduct of the Charleston Area Medical Center. CAMC is not an ordinary lay-person, baffled by the glacial pace of justice or perplexed by the seemingly impossible disaster of losing a just cause. CAMC is a professional player whose own lawyer performed negligently and incompetently, if not in willful contempt of Judge Kaufman's court.

Judge Kaufman did not respond in an unsporting way by imposing a sanction (such as dismissal of CAMC's case) and forcing CAMC into funding the expense of an appeal. Judge Kaufman simply called the client to suggest that one of its own bevy of retained lawyers -- perhaps a competent one who regularly got out of bed early enough to attend court -- appear on the case at the next hearing. Furthermore, all the evidence from the complainants showed that the conversation between the judge and CAMC's CEO, Philip Goodwin, was entirely amiable.

Mr. Goodwin believed that Judge Kaufman was trying to influence CAMC's position in the case before him. See maj. op. at 4. I do not condone ex parte communication by judges, and I certainly do not condone attempts by judges to influence cases before them. Although Judge Kaufman's conversation with Mr. Goodwin went a bit far afield, the conversation was brought on by the negligence of CAMC's

own counsel. Ex turpe actio non auritor. The senior partner of CAMC's law firm who put Mr. Goodwin up to filing an ethics complaint had some nerve.

Law should be a profession practiced among gentlemen. See _____(Brotherton, J., dissenting). And this is a dispute that should have been settled in a gentlemanly manner, without unnecessary resort to the disciplinary process. This is especially the case when (as in a community like ours) the same lawyers must work with each other again and again. For in such a community - What goes around comes around!