

ISTHMUS



MADISON'S WEEKLY NEWSPAPER

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December 5, 1996

Attorney General James E. Doyle
P.O. Box 7857
Madison, WI 53707-7857

Dear Attorney General Doyle,

I am writing to complain about the conduct of one of your assistant attorney generals. At 1:28 pm today, Maureen McGlynn Flanagan left a voice-mail message for me at *Isthmus*. She said on the message that she was an assistant attorney general but was responding to an item in *Isthmus* in "my capacity as an attorney." The item, a brief news story on P. 8 of *Isthmus*' Dec. 6 issue, concerned reaction to Federal Judge John Shabaz's references to "the homosexual agenda" in his Nov. 29 decision regarding segregated fees at the UW.

Flanagan, in her message, said she felt it was very unfair of me to have followed several quoted criticisms of Shabaz's wording by writing, "As of press time, Judge Shabaz had not responded to a written request for comment." Flanagan said this statement was unfair because I should have known that Judge Shabaz was prohibited for commenting on his written decisions. She left both her home and office number and asked that I call her back.

I did, at about 1:40. I explained to Flanagan that I had called Shabaz's office and spoke to his secretary, Sandy. (This happened on Tuesday, Dec. 3.) I said I wanted to give Judge Shabaz an opportunity to respond to these criticisms, but strongly suspected that he would decline to do so. Sandy stated that the judge in this case might indeed want to respond to these criticisms, and that I should submit a written request to the court in writing. I asked whether I might not save myself some time and simply report that the judge could not or would not comment, and was told I should not assume this to be true. I sent Judge Shabaz the written request.

After I explained this conversation to Flanagan, she continued to insist that my statement at end of the piece was very unfair, and that she was surprised that someone in my position--a news editor--did not realize that the Judicial Code of Ethics prohibited Shabaz from commenting. I repeated that Shabaz's secretary did not seem to be aware of this hard-and-fast rule. I also mentioned that I have in the past routed a request for comment from Federal Judge Barbara Crabb through courthouse staff, and received an official, reportable decline.

Flanagan reiterated her assertion about the Judicial Code, and her belief that I was shockingly uninformed. She proceeded to read from the state code, identifying the section as 60.16. Throughout this conversation, as in the message, Flanagan's tone was very belligerent, insistent and insulting. Her point was that I ought to be ashamed of myself for being such a no-nothing, unprofessional reporter.

I object to Flanagan's conduct for several reasons. One, I believe the additional information I provided about my conversation with Shabaz's secretary ought to have forced a reassessment of her criticism. Second, I don't understand how this well-paid state employee justifies the use of state time to harangue a newspaper editor about a matter far removed from her job duties. Thirdly, I don't think it is appropriate for a state employee on state time to take such a snide, superior tone, which I objected to at least twice during our conversation. I particularly object to this snide, superior tone in light of the fact that Flanagan apparently doesn't know what the hell she's talking about.

According to Jim Alexander, executive director of the Wisconsin Judicial Commission, the Judicial Code of Ethics from which Flanagan read does not apply in any way, shape or form to federal judges. There may be similar language governing federal judges, but Flanagan specifically cited the state code as the basis for her tirade.

I don't wish for there to be any discipline imposed on Flanagan. I gather from my encounter that she already exists in her own private hell. But I would appreciate an apology for her rudeness and presumption.

Best,



Bill Lueders
News Editor

Enclosures
cc/ Maureen McGlynn Flanagan

12/6/96

Bill,

So the circle is completed.

Flanagan (who's a neighbor) called me at home Thursday night to complain about your rudeness. Based solely on her accounting of events, I told her that she had horribly misinterpreted our intent. That if she should be angry, it should be directed at me, because I'm the one who insisted that you file a written request for a comment. I explained to her that we were bending over backwards to be fair to Shabaz--that no, we weren't trying to cheap shot him.

I also told her that even to me it was clear that the state bar/Supreme Court rules wouldn't apply to federal judges. (It seemed odd to me, too, that she would bring that up.)

For what it's worth, Flanagan is sensitive to the ex parte communication thing because her husband's sister is a judge in Milwaukee who she feels was subjected to a campaign of vilification by Charlie Sykes. The judge apparently made a decision Sykes didn't like, and he urged his listeners to call her office to tell her how stupid the decision was. (Flanagan says Sykes should know better because his wife is a judge.)

I'm a bit uneasy about you writing Doyle about this. I'm regularly calling people at work to talk about non-work-related stuff with state employees; I think we all do it.

On the other hand, she called me to complain about you, so the circle is complete.

Marc



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January 15, 1997

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Bill Lueders
News Editor, Isthmus
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Dear Mr. Lueders:

Thank you for your letter of December 5, 1996, to the Attorney General regarding your complaint about Assistant Attorney General Maureen McGlynn Flanagan. I have been asked to review and respond to your letter.

Attorneys and other staff members of the Department of Justice are encouraged to communicate with the members of the media and the public in a professional and courteous manner. I was not privy to the phone conversation between you and Ms. Flanagan. However, I have known Ms. Flanagan over the years to be a talented and hard-working public servant. I am sorry if you were offended by her remarks.

Ms. Flanagan was not representing the Attorney General or the Department of Justice when she called you. Ms. Flanagan has had no role in the U.W. segregated fees case. Ms. Flanagan contacted you as a private citizen. She did so during her lunch break. As members of the state bar and as citizens, attorneys who work at the Department of Justice have the right to express their personal opinions without prior approval from their employer. We do not and cannot issue gag orders to our attorneys.

As Ms. Flanagan was not speaking as a representative of the Department of Justice or the Attorney General, I will not comment on the merits of the matter.

Thank you for your letter.

Sincerely

Matthew J. Frank
Assistant Attorney General
Administrator, Legal Services

MJF:lkw