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## Odor! Odor in the Court

***It wasn't impossible to find justice in Michael Dufficy's Marin County courtroom. But it was easier if you had been to one of his parties.***

BY MATT ISAACS

Paul Camera, a family law attorney in Marin County, didn't want to embarrass the judge. He only wanted what was best for his client, and unfortunately that meant taking the extraordinary step of asking the Honorable Michael B. Dufficy to remove himself from the case.

It was not an easy decision to make, even for a widely respected, seasoned attorney. Judges do not look kindly on lawyers who publicly challenge their authority. To ask the judge to recuse himself could make life very difficult for Camera in this case and perhaps others in the future. Complicating matters, Camera had known Dufficy since their college days at Stanford. But the attorney says he had no choice.

"It was just time," he says. "I couldn't stand it anymore."

So in April of last year, Camera, an imposing figure with an iron handshake, marched into Dufficy's courtroom and asked him to remove himself from a divorce case, on the grounds that the judge was biased in favor of the opposing attorney, Verna Adams. "She was involved in your campaign when you ran for judge," Camera said. "She was a close personal friend before and after that ... which included invitations which she has accepted to Your Honor's place in Sheepranch to spend weekends up there with you. ... So I'm asking you to recuse yourself."

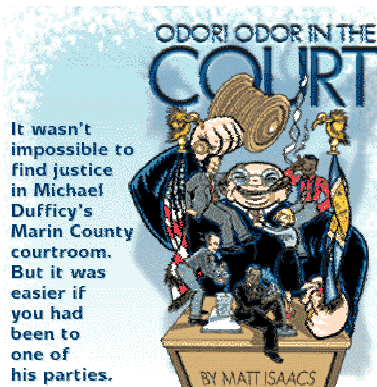
Adams immediately denied Camera's allegations, accusing him of diverting the court's attention from the merits of the case. "I think Mr. Camera ought to be ashamed of himself," she said.

Dufficy appeared equally reluctant to take the attorney's claims seriously. "Well, Mr. Camera, let me say something. If I thought for one minute that I had a relationship with any lawyer that appears before me that caused me to consciously or unconsciously favor that lawyer, I would not -- I wouldn't have any hesitancy to recuse myself," the judge said, adding that a subordinate had told him Camera was going to make the request. "I have not decided what I am going to do on the recusal yet, but I find it difficult -- I just want to be candid --"

"Your Honor, this is the morning for candor, believe me," Camera pleaded, pressing his argument. "The last thing I want to do after all these years -- I mean we've known each other since before we were old enough to legally drink ...."

The attorney paused.

"I wish you would accept ... the recusal request, please."



After a brief recess, Dufficy agreed to remove himself, not because of bias but based on the technicality that he had received word of Camera's intentions outside the courtroom, considered an ex parte communication.

Camera had won a minor victory for his client, but the attorney had actually spoken for many other lawyers and litigants who had lost faith in the judge. Things had gotten so bad, Camera says, that the facts of the case didn't matter in Dufficy's courtroom -- it was all about the attorney. "We called it the "Verna Factor,"" he says. "If Verna Adams was representing the opposing side in Dufficy's court, you might as well not show up."

And it was not just Adams, Camera says. It was a little group of five or six attorneys who could do no wrong as far as Dufficy was concerned. "It got to the point that we weren't practicing law anymore," says Camera. "We were practicing politics."

The Marin County Family Court is in turmoil, and Judge Michael Dufficy is at the center of the storm. The judge is the subject not only of a federal investigation but also a recall effort, based on charges that he and a small coterie of lawyers engaged in favoritism and ethical misconduct that ran roughshod over the justice system. Lawyers and litigants allege that Dufficy and a close circle of his friends decided highly charged cases of child custody, divorce settlements, and inheritances not on their merits but according to personal whims, friendships, and favors.

The judge and his pals socialized together, held wild parties every year at the judge's vacation home, and even had a name for themselves -- the FLEAs, for Family Law Elite Attorneys. Though Dufficy was no longer an "official" FLEA when he joined the bench, he remained within its social circle and in fact became the group's de facto head.

Now the judge's actions are under investigation by the FBI. The Marin County Superior Court has also appointed a Blue Ribbon panel to look at the practices of its family law division. And just a few weeks ago, the state's Judicial Council, in charge of administering California's courts, asked a national regulatory agency to do its own independent investigation of Marin's family-law practices.

Dufficy has never acknowledged that his friends enjoy special treatment in court. Though he has failed to respond to numerous inquiries regarding this article, he has denied in court briefs that he favors anyone.

But public records and interviews show that Dufficy has, indeed, smiled upon a circle of friends, and in doing so, overstepped the ethical boundaries of his office. Those breaches include:

- charges that he has decided cases based on personal relationships;
- presiding over cases even though he had direct and indirect financial ties with one of the attorneys;
- hearing a large number of cases while his wife was working for the lawyers appearing before him;
- hosting long weekends at his ranch, attended by a select group of attorneys, where court business was a regular topic of conversation, according to one of Dufficy's closest confidants.

Kathryn Shepherd once counted herself a valued member of the FLEAs -- the secret club whose members considered themselves the A-list of family law lawyers in the county. But Shepherd has broken ranks and decided to come clean. She says she has been interviewed by the FBI about the judge and his small clique of attorneys.



*Kathryn Shepherd once counted herself a member of the "in" crowd of attorneys.*

Organized in the early 1980s, the FLEAs hoped to promote collegiality, and maybe drum up some business for one another. Shepherd says the group would sometimes meet to discuss changes in case law. More often, it would meet socially to talk shop. The club was very exclusive, she says, and very hush-hush.

"There would always be some argument over who we should allow in," Shepherd says. "We were the 'in' crowd. It was like a high school clique."

Dufficy, who had a large family-law practice, was an active member of the club until he became a judge, but even afterward he maintained close ties with the group. In fact, every Memorial Day, the attorneys would trek up to Dufficy's 15-room manor for a three-day bacchanalia in a little town called Sheepranch.

Shepherd says Dufficy threw an especially wild party the year he was appointed judge. He had always wanted to sit on the bench; it was in his blood. His grandfather had served as a Marin County Superior Court judge at the turn of the century. Dufficy had run for a judgeship twice but lost both elections. However, he had played the political game well, most notably by co-chairing George Deukmejian's successful 1982 and 1986 gubernatorial campaigns in Marin County. That service paid off when the governor appointed Dufficy to the Municipal Court bench in 1990. Dufficy finally attained his judge's robes by accepting a political plum.

That year at Sheepranch, Shepherd says, Dufficy passed out T-shirts to all the guests with a picture on the front of a large man smoking a cigar. "Good Ol' Boy," the T-shirt read. The back depicted two bald, rotund men in business suits scratching each other's backs. All weekend, she says, Dufficy walked around in a judge's robe with nothing underneath. One night after dinner, all the attorneys got together and sprayed whipped cream on the new judge's bald head, adding a cherry for good measure.

"It was really something like Animal House," Shepherd says, laughing. "Folks would begin drinking as soon as they got up in the morning. Beer. Wine. At night they'd hit the harder stuff."

A real ham at the annual parties was one of Dufficy's best friends and a business associate, Richard Riede, a handsome, All-American type, who always brought his ukulele. He would lead the group in sing-alongs deep into the night, belting out the University of Oregon "Fight Song" and old standards like "A Bicycle Built for Two." His favorite, though, was the "Banana Boat Song," which he would begin singing at the top of his lungs when he woke up and would continue throughout the rest of the day: "Day-o, daaay-o, daylight come and we wanna go home ...."

Dufficy always played the part of the big man on campus at Sheepranch, Shepherd says. That's what the weekends were really about. Allowing the judge to pour you a glass of whiskey. One good ol' boy to another. Good people taking care of their own. And the judge's friends lapped it up. "Naturally, we were all ecstatic when Mike became a judge," Shepherd says. "You can't pay for that kind of access."

Dufficy's favoritism toward a few anointed attorneys was long suspected among other lawyers in the Marin County Courthouse. In an anonymous survey by the Marin County Bar Association released last December, which asked attorneys to grade judges, more than 30 percent of respondents said Dufficy either needed improvement regarding fair and equal treatment of all parties or showed actual bias. Worse yet, 50 of the 60 written comments were negative, many accusing the judge of favoritism:

"Basically, Judge Dufficy will do whatever he wants in any given case, regardless of the law. It is common knowledge that he favors certain attorneys."

"I have noticed Judge Dufficy shows deference to older, experienced attorneys who on occasion misinform him of the law or facts -- which he never doubts. The term 'good-old-boy' has come to mind more than once."

"Intellectually challenged. Favors 'old buddies.' Lazy. Big ego. Loves to have attorneys kiss up to him. If not on his party list -- you have no chance!"

Dufficy was devastated by the survey, Shepherd says. Over lunch one day, Dufficy told her and two other attorneys that he was considering a transfer to another jurisdiction. The lawyers talked him out of it; bowing to criticism, they said, would only further politicize the court.

But in February of this year a bigger bomb dropped when a New York author named Karen Winner released an investigative report thrashing Dufficy for favoring his comrades in Family Court. The investigation, based

on scores of interviews and thousands of pages of documents, declared that Dufficy puts "power, profit, and self-interest over the welfare and safety of children and litigants."

Winner conducted the investigation on behalf of a small group of angry citizens. And though her report was flawed -- relying mostly on people who had lost cases before the judge -- it reinforced what many had suspected for years: The Marin County judicial system, and Judge Dufficy in particular, plays favorites in the courtroom.



*Judge Michael Dufficy attributes his friendships to more than 30 years of practicing law in the same county. "Cronyism? I know everybody," he told a legal*

Winner described case after case in which the litigants felt mystified and betrayed by the county's legal system.

One woman told of how two lawyers -- including her own attorney -- literally locked her out of the room as they and her husband decided her divorce settlement. "I was left to sit outside in the hallway like a child," she told Winner. By the time everyone returned to officially record the settlement, "they had made all the deals," she said.

The woman refused to sign what she considered a lopsided agreement, according to the report. The judge simply ignored the woman's protests and upheld the unsigned settlement as a final judgment.

(The opposing counsel denied any wrongdoing. "Finally her own lawyer got so fed up with her, because she's so difficult, that, yes, we did meet for about two hours without her," he said, according to Winner's report. "A lengthy accounting is all it was. It was not anything mysterious.")

In another case, a woman accused Dufficy of allowing her husband to pay for attorney's fees by taking the money out of her child support payments, widely considered taboo in divorce proceedings. The attorney, whom Dufficy had appointed to represent the child, was a regular at FLEA meetings.

The woman denied ever giving permission for the payments, which she depended on to clothe and feed her son. (Opposing lawyers said she gave oral approval.) She told Winner that she had sent several letters to her lawyer, objecting to the payments, to no avail.

"From this point forward, I will sign over all of the support checks to Judge Dufficy, who may then distribute the funds to whomever he sees fit," she wrote in one sarcastic letter quoted in the report. "It may even serve to save the Court's and the attorney's time ... to remove me and [the child] from the loop altogether."

Seven attorneys, mostly FLEAs, released a rebuttal to the Winner report, though it fell short of addressing many of the most pointed allegations. Dufficy, in a court declaration, took a swing at Winner's investigation as well. "The report on the Marin County Family Court system ... is not a report at all," the judge wrote. "It is in fact a poorly written, incompetently investigated, and biased referral to child custody cases. ... The so-called report was written by a self-appointed 'expert' who was paid some \$12,000 by the dissatisfied litigants and their supporters to prepare what amounts to a political hit piece ...."

In defense of his conduct, Dufficy has said he keeps a professional distance while socializing. His friendships, he says, come from practicing law in the same county for some 30-odd years. "Cronyism? I know everybody," he told one legal journal.

The pervasive allegations of favoritism are not the only charges against Dufficy. Evidence shows that the judge also committed other ethical violations. In particular, the judge's relationship with Richard Riede provides perhaps the clearest example of why Dufficy is now under investigation.

Riede is one of the judge's best friends and was a regular at the Memorial Day parties. More than that, he also shared a common business interest with Dufficy by acting as his attorney -- yet, in an obvious breach of ethics, the judge failed to recuse himself when Riede appeared before him in court.

Until June 1998, Dufficy owned a significant stake, of at least \$30,000, in a duck-hunting lodge in Solano County called the Island Club, according to public records. At the same time, Riede handled at least part of

the lodge's business affairs: He performed the club's administrative work, signing all the club's correspondence and its applications to transfer stock, according to documents from the state's Department of Corporations.

Riede's law firm, Riede & McCall, also appeared on documents filed when the judge and his wife were selling a personal piece of property. (Riede refused to answer any questions for this article.)

The state's Code of Judicial Ethics is very clear about such financial entanglements: "A judge shall not engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position, or involve the judge in ... continuing business relationships with lawyers ... likely to appear before the court on which the judge serves."

Not only did Riede appear before Dufficy, the judge also appointed him as counsel on a conservatorship case that earned Riede about \$40,000 in costs and fees, according to the family's records.

Dufficy also heard a case in which Riede was representing the trustees of a wealthy estate. A woman by the name of Lisa Kaufman believed she had been misled into accepting an agreement that drastically cut into what she believed was her share of a \$1 million inheritance, and demanded in court for an accounting of how the money had been spent.

Dufficy took the case, despite his business relationship with Riede, and even after Kaufman's attorney asked the judge to recuse himself by pointing out that Dufficy had once represented Kaufman's husband as an attorney during the couple's temporary separation. Dufficy stayed on, and quickly asserted himself on his friend's behalf. The judge denied the petition, dismissing it as a frivolous request. Kaufman's attorney declared in a court brief that Dufficy "might become the first judge in some 500 years of trust history to find a petition for accounting frivolous."

Dufficy's ruling was unappealable, so Kaufman sued the estate, and Riede as counsel for the trustees, for fraudulently providing her with erroneous information. A court commissioner working under Dufficy dismissed the lawsuit. On appeal, the appellate court also found in favor of Riede, ruling that his representations to Kaufman were merely opinions rather than fraudulent statements.

Dufficy's initial ruling had sidetracked the case. Even if the judge had reason to deny a simple accounting of how the estate spent its money, the fact that he was ruling on the case at all was an undeniable ethical miscalculation.

The judge has entangled himself in further conflicts of interest by allowing his wife, Penelope, to work for many of the same folks he invites to the ranch. Dufficy's financial disclosure statements acknowledge that he derives income from his wife's work, but he has rarely, if ever, declared those indirect financial relationships when attorneys who had hired his wife have appeared in his court. Richard Riede's office, for example, employed Penelope in 1994, while he was serving as Dufficy's court-appointed counsel in the lucrative conservatorship case. Verna Adams also hired Penelope while she was appearing before Dufficy in court.

The state's Code of Civil Procedure says that a judge has a financial interest in a proceeding if the judge's spouse is associated with a lawyer appearing before the judge. The state's Code of Judicial Ethics also frowns on the practice. "A judge shall discourage members of the judge's family from engaging in ... continuing business relationships with persons to appear before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification."

Mauna Berkov, a family law attorney who is one of Dufficy's biggest supporters, says she doesn't believe the judge has strayed from the guidelines of his office. "Judges are able to keep the boundaries separate between their professional and social lives," she says. "The accusations of ethical misconduct are completely unfounded." Still, she says, she wouldn't hire Penelope Dufficy as her secretary, and she wouldn't want to face an attorney who kept the judge's wife on the payroll.

Dufficy seems to have also blurred the lines of proper conduct by renting office space to lawyers in a commercial building he once co-owned in San Rafael. Dufficy bought the two-story building in 1986 with three other lawyers. Dufficy claims he sold his interest in the building when he became a judge in 1990. But public records show that Dufficy's wife held at least a community interest in the property until 1994, suggesting that the Dufficy household may have been collecting rents from lawyers appearing before the judge well into his tenure.

Amid all the uproar over the investigations, the judge left Family Court in May, citing a heart condition. He has chosen to focus on the less acrimonious job of tending to general civil court matters. Even so, he and his inner circle have made little effort to clean up their act. The judge still invited everyone up to his ranch house over Memorial Day. And when the county court system created a Blue Ribbon panel to investigate its family law division, incredibly, Dufficy's closest supporters initially agreed to sit on the panel, including Riede's law partner, John McCall. That is, until Kathryn Shepherd pointed out in a court declaration that the so-called independent investigators were, in fact, collecting -- and contributing -- money for Dufficy's defense against a recall election.

"It's arrogance," Shepherd says. "You get away with something for long enough, you think you're invincible. Then even when things fall apart you can't stop."

Once an intimate part of the judge's social circle, Shepherd would know. In her office in Larkspur one Friday evening, as the sun burns gold through the windows, she recalls when her opinion of Judge Dufficy began to change.

In December 1998, Dufficy and a group of attorneys met for dinner at Salute, an upscale Italian restaurant in San Rafael. The party had reserved a private room in the back and intentionally entered the restaurant in ones and twos to avoid notice. They came to discuss a policy matter regarding the courts, but it was also a social gathering, and it might not look right if a bunch of lawyers were seen clinking wineglasses with the judge.

Shepherd was sitting across the table from Dufficy and an appointed court officer known as a referee, who did most of the grunt work for the judge. People were talking among themselves, gossiping over their salads, when an attorney by the name of Judith Cohen abruptly sat down next to Shepherd and began raving about how she had almost gotten arrested at a deposition before coming to the meeting. The table was all ears, Shepherd says, as Cohen began describing her opposing attorney as a "madman." Shepherd says she noticed the judge listening intently as Cohen went on to paint a "clearly negative characterization of the opposing attorney and client." She says she didn't know Dufficy was the presiding judge on the case, or that the man sitting next to him was the discovery referee.

Shepherd found that out later, when by coincidence she took over the case from the attorney whom Cohen had described as a "madman" -- and found herself in negotiations she knew had already been tainted by what the judge had heard over dinner. She watched Dufficy and his underling ignore what she says was a mountain of evidence that showed her client deserved far more money than her husband was offering in the divorce case. She was so horrified by what she saw in court, she says -- including a complete disregard of evidence that her client's husband had illegally tried to conceal his income and assets -- that things could never be the same between the judge and her again. "It shouldn't have happened, but it did," she says, referring to how the judge's social life overlapped with his professional duties. "That's how things were done in Family Court. Nobody stood up and said, 'We shouldn't be having this conversation.'"

Shepherd says she found herself reflecting back on the Karen Winner investigation. "When I first read the report, I thought it was poorly done," she says, "but after a while it would actually keep me awake at night."

She says she does not believe it was money that led the judge astray. Dufficy, she says, always had enough money. It was something else. Power maybe, or the need for love. "We were supposed to be friends, but there was always something strange about it," Shepherd says. "If Penny [Dufficy's wife] inquired about working at your office, you couldn't turn her down. Then she'd get in your files, and you just had the feeling that somehow the judge was nosing around in your business. It was creepy, really. And then, of course, you couldn't turn down an invitation up to the cabin."

She says it dawned on her that frolicking with the judge was not just fun and games. And those affected by that behavior were not just disgruntled litigants but people in trying situations seeking help from the legal system.

Now the sun bleeds red through Shepherd's window. "I finally realized that what we were doing was wrong. It was not in the interest of justice. We were living a lie."

