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Wednesday, June 28, 2006
Paul Howard is not above the law
Controversy over Fulton deputy would never have happened if DA had simply obeyed judge's order

By Cary Ichter, Special To The Daily Report

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I READ WITH great interest the Daily Report's June 22 report on the findings of Richmond County District Attorney Daniel J. Craig in deciding to not prosecute Fulton District Attorney Paul Howard for the alleged assault of Fulton County Sheriff's Deputy Levoular McCray.

Immediately after reading the article, I obtained and closely read Craig's letter to Attorney General Thurbert Baker. Craig is to be congratulated on conducting a thorough, fair and even-handed investigation. I was truly impressed by the detailed analysis of the facts presented by Craig.

Craig's thoroughness and professionalism stand in stark contrast to the conduct of Howard, whose unprofessional conduct before Superior Court Judge T. Jackson Bedford Jr. preceded the unfortunate controversy involving the deputy.

Anyone who has followed this story knows that there has been simmering animosity between Howard and Bedford for some time. This animosity apparently has its roots in Bedford's rebuke of Howard two months earlier in an unrelated incident, according to Craig's letter.

FIND OUT MORE

Read the letter from the special prosecutor to AG Thurbert Baker:

Letter:

Danny Craig writes to the AG (June 20, 2006; pdf)

On Feb. 1, Howard had attempted to intervene in a discussion between an assistant district attorney and Bedford, prompting Bedford to tell deputies to remove Howard from the gallery section of the courtroom.

As an avid reader of the Daily Report, I am sure that this is not the first reported incident of Howard having run-ins with the judges he and his staff appear before. And, all too often, those

conflicts turn into battles of will in which the criminal justice process is required to take a back seat to the hubris of Howard. Howard apparently takes adverse rulings and verdicts—even after having had so many—as a personal affront. So, rather than follow the process well-known to all trial lawyers—appeal—he chooses instead to initiate feuds with judges.

Bedford's order ignored

The incident that led to the detention of Howard involved an informal post-trial conference among the various participants in a just-completed jury trial. As discussions among the participants proceeded, Howard remained in the gallery section of the courtroom.

As the discussions progressed, Howard made his way to the jury box. As Craig reported, "Judge Bedford told him that he could not ask questions and directed him to sit down. Howard insisted that he had a right to ask a question to the jurors."

Now, I don't know about the rest of the trial lawyers out there, but as for me, when the judge tells me to do something, the only thing I "insist" upon is that anyone impeding my progress in complying with the court's directions gets out of my way. Not so with Howard.

Instead, Bedford, according to Craig's letter, was forced to "repeat the instruction for Howard to be seated," which instruction was again ignored. At that point, "Judge Bedford directed the courtroom deputies to remove Howard to the detention area, outside the courtroom." Is there anyone who can seriously claim to be surprised by this?

District attorneys, like all other lawyers, are justifiably expected to know and to follow the rules with the utmost fidelity and professionalism. Howard fell far short of that standard when he personally confronted Bedford rather than heeding the instructions of the court. There are many recommended ways to challenge a court's directions. None of them include ignoring the judge as a preferred option.

If Howard had an interest in speaking to the jurors, instead of showing Bedford who was in charge, he had appropriate alternatives. As any trial lawyer knows, juror interviews are often conducted outside of the courtroom or even over the phone after the trial is over. Howard could easily have had his assistants invite the jurors out into the hall to talk.

Instead, he chose to pick a fight that he not only could not, but should not win. In short, it was Howard's insistence that the court would not direct him as to his conduct in the courtroom that led to this sad episode.

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More importantly, whether Howard likes it or not, that courtroom is Bedford's courtroom; he is responsible for what happens in it, and as a consequence, he has the right to dictate the manner in which it is operated.

When Bedford directed Howard to step back from the jury rail, Howard was obliged by every rule of procedure, custom, and common sense to do just that.

Every lawyer—big-firm, small-firm, prosecutor, defense, rich, poor, famous or infamous—knows that when a judge tells you to do something in his courtroom, you do it or you face the prospect of going immediately to jail.

Perhaps the most stunning consideration in all of this is that Howard is supposed to be one of the chief law enforcement officers in Fulton County. But rather than demonstrate respect for the rules, he struts about as though they do not apply to him because of his "stature."

Just because you have an important job does not mean you are an important person.

CARY ICHTER is a partner in Thompson Hine's business litigation practice group. A trial lawyer who primarily handles commercial disputes, his clients include national franchise companies, which he represents both regionally and nationally. His practice also includes disputes involving restrictive covenants ancillary to employment agreements and trade secret misappropriation actions. He can be reached at cary.ichter@thompsonhine.com.

Special To The Daily Report Cary Ichter

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