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Attorney seeks to remove judge from hearing DUI cases

Larin claims Small doesn't recognize due process

By Chris Jackett
C & G Staff Writer

BLOOMFIELD TOWNSHIP — Having spent the past 35 years defending drunken driving cases, local attorney Robert Larin said he now knows why so many clients lately have ended up behind bars on a first offense.

He said 48th District Court Judge Kimberly Small has spoken out that jail is the answer.

“The first-defense drunk driving cases, most of these just end up as impaired driving,” Larin said. “She makes her criteria that jail is an answer. She hasn't had to meet the driver before she decides the driver has to go to jail. At times, I sat in that courtroom and watched people go off to jail that in other districts wouldn't go to jail. The term ‘due process’ is only another term for treating people fairly.”

Larin filed a motion in 48th District Court Aug. 10 that accuses Small of violating the defendants' constitutional rights and proposing she be barred from hearing such cases.

“I don't have anything against her. We've always had a cordial relationship,” Larin said, noting that the two have agreed to disagree on many issues. “The law says, if the judge's disqualification becomes evident, that anyone that learns of the disqualification has to act. Until these public announcements came out (after the Jalen Rose case), we didn't know where she was coming from.”

Small sentenced Rose to 20 days in jail on July 27 after the former NBA player and University of Michigan Fab Five standout was involved in a one-car accident March 11 in West Bloomfield. A blood test revealed a 0.12 percent blood-alcohol content at the time of the accident, which is above Michigan's 0.08 legal limit.

Rose was also put on 12 months reporting probation during which he cannot possess drugs or alcohol, and is required to submit to random alcohol testing, attend a Mothers Against Drunk Driving Victim Impact Panel, complete an alcohol awareness program within 60 days and pay more than \$1,200 in fines and other costs.

Drunken driving can result in jail sentences ranging from zero to 93 days behind bars, Larin said.

Small's secretary, Debbie Albano, said the judge couldn't comment on pending cases she's involved with, such as the motion by Larin. However, Small made her stance on drunken driving clear after the Rose verdict.

“I firmly believe that we have to send a message out there: We're not going to tolerate it here, because we have to stop this crime before it happens, that's the only way we can save lives,” Small said shortly after sentencing Rose. “I don't have a problem with people getting drunk. Just don't drive. They're putting our lives on the line because they won't pick up the phone that's in their pocket and make a phone call. In this community, I feel strongly about sending a message that we won't tolerate it any longer. The carnage that's being left behind by drunk drivers is so preventable. We need a paradigm shift. People just need to know that we will not tolerate it. You cannot put our lives in danger.

“I don't have the luxury of just looking at (Rose) — I've got to look at him and through him and into the community that I'm hired to protect. You don't have the right to put our lives on the line. ... Our focus needs to

be on preventing this. Not just what do you do once somebody's done it, but how do you get people not to do it in the first place.”

The carnage being left behind by drunken drivers accounted for 5.8 percent of the 6,659 total injury crashes in Oakland County in 2010, according to the Michigan State Police's Annual Drunk Driving Audit. Alcohol was involved in 14 of 54 fatal crashes, killing 15 people. Just 2.1 percent of 26,745 property damage crashes throughout the county had alcohol involved last year.

“She operates in the judicial branch, so she shouldn't be making comments that the legislative law isn't working,” Larin said. “She's at odds with other district judges across the state. There's a group of judges who don't use it (discretion) and they all know it. They think jail is the answer.”

Larin said the effects of a jail sentence extend beyond just the time behind bars, and jail time affects more than just the individual.

“People are losing their jobs,” Larin said. “We should not be taking peoples' jobs away on a first offense when there are so many other ways that are beneficial.”

Following budget cuts, Larin said, the county also has limited holding space in its facilities. He said Small could opt to sentence people to wear tethers that track their location to a four-square-foot radius, their blood-alcohol content and the speed they're traveling 24/7, but she is opting to send them to already overcrowded jails instead. He said this often results in other criminals being released to make room.

“Going to jail is a very degrading experience,” Larin said. “It's not that we shouldn't hold them responsible, but it's the different circumstances. I'm trying to make sure people don't get on the highway drinking and driving.”

Larin said there are several things Small, as well as those consuming alcohol, don't consider. He said women register a BAC 15 percent higher than men of an equivalent weight, and some medications, such as Zantac and other antacids, inflate BAC levels by more than 35 percent.

Additionally, he said, drugs such as Adderall — a dextroamphetamine/amphetamine combo used to treat attention deficit/hyperactivity disorder — absorb the unsteady effects of alcohol, but do not restrict BAC levels from increasing, which increases the chances of alcohol poisoning as bar patrons would not feel the effects as much.

“The thing is, a lot of people don't know this, and that is why each case should be decided on the individual case,” Larin said.

Small will hear Larin's motion first, and if she denies it, it will be argued before Chief District Court Judge Marc Barron. It would then go to Oakland County Circuit Court, and could then be appealed to the Michigan Court of Appeals and then the state Supreme Court.

“It's something that can affect any of us as long as we have the right to drink and drive in the state,” Larin said, noting that combo should not be used together. “It threatens anybody who wants to drink.”

Staff Writer Jennie Miller contributed to this article.

You can reach C & G Staff Writer Chris Jackett at cjackett@candnews.com or at (586)279-1110.