

Judge's drunken driving sentences challenged

Published: Sunday, August 14, 2011

By Shaun Byron
Daily Tribune

An attorney and Wayne State University professor are disputing how a local judge sentences first-time drunken driving offenders.

A motion to disqualify was recently filed against Judge Kimberly Small in 48th District Court.

“Her recent announcements in regard to her sentencing indicate she may be violating due process rules under the state and federal constitutions,” said attorney Robert Larin, a former county and federal prosecutor.

Small unofficially was labeled as being the toughest in the state on people guilty of drunken driving. The brand on her reputation came just before she sentenced former University of Michigan and NBA basketball player Jalen Rose to 20 days in jail.

Rose, who now works as an NBA analyst for ESPN, is serving that time in the Oakland County Jail after having pleaded guilty to a misdemeanor charge of operating a vehicle while intoxicated.

Small declined to comment on the motion, citing it as an open case.

Small in an interview said she has no way to accurately gauge if she is indeed the toughest in Michigan on drunken drivers. While Small said she looks at each case individually, she also stated she doesn't “tolerate drunk drivers.”

The statements Small made in interviews show she is possibly interfering with the legislative arm of the government, Larin said.

Between 80 and 85 percent of first-time offenders are convicted of a reduced charge, he said.

“These cases are a minimum of zero days and a max of 93 days,” said Larin, adding Small is refusing “to follow state law.”

Before filing the motion, Larin said he had it reviewed by Kenneth Mogill, a professor at Wayne State University.

“When we did the research, and he did most of it, it was determined she should be disqualified from hearing first-offense cases,” he said. “Some of her statements and actions would indicate ... she may not be exercising proper discretion.”

The public online debated Small's reputation and how motorists convicted of drunken driving should be treated following the news of the motion.

One person using the name BigBoss wrote he doesn't approve of what Small is doing.

“She is doing a bad job,” he said. “She needs to start putting harsher fines on real crimes like dope dealing. That's a much bigger problem.”

Another reader, using the name michiganretiree, wrote about a family member's struggle with alcohol.

"I had a son who had a drunk-driving problem about 15 years ago, and he always said if he would have gotten more jail time in the beginning it would have deterred him. He felt the system needed to change," the person wrote. "Good for this judge."

A person using the name Wolverine 1 wrote each case should be treated differently.

"I think in some cases jail time for a first offense may be warranted, but certainly not in every case," he said. "Mandatory jail time for a first offense is too severe. Our jails are too overcrowded and costing us taxpayers too much money.

"I think this judge is out of control."