

August 12, 2011

# Lawyer seeks Oakland judge's removal

## Strict sentencing on drunken driver cases crosses line, he says

Mike Martindale/ The Detroit News

*Bloomfield Hills* — An attorney who filed a legal challenge to a district judge's right to hear drunken driving cases says "somebody had to question her actions."

Attorney Robert Larin, along with Wayne State University law professor Kenneth Mogill, filed a motion this week asking Bloomfield Hills 48th District Judge Kimberly Small to disqualify herself from hearing a matter involving a drunken driver represented by Larin because of her history of aggressive sentencing.

Larin alleges Small, through public statements and actions in recent years, has "crossed the line" and has been "abusing her judicial discretion" in tough sentences for drunken drivers and violating constitutional law with unfair treatment.

"I like her personally," said Larin. "But when it comes to drunk driving cases, I don't think she's being fair to first-time offenders.

"And she has gone as far as to say other district judges should be doing the same — implying they're being soft on persons who have made the mistake to [drink](#) and drive. She is legislating from the bench and it's not right."

Larin represents Thomas S. Cygan, 67, a businessman arrested for drunken driving in West Bloomfield Township. Small has been assigned the case, and a Sept. 24 pretrial hearing is scheduled.

Larin hopes she will voluntarily disqualify herself or have the matter decided by the court's chief judge.

Small made headlines recently when she sentenced Jalen Rose, an ESPN analyst and ex-pro basketball player, to jail for 20 days for drunken driving after he went off the road in March.

Small has said the threat of jail is the most successful deterrent for motorists who make the decision to drink and drive.

While first-time offenders can receive a maximum of 93 days in jail for the misdemeanor offense, most get probation, community service, fines and alcohol awareness classes, Larin said.

"Jail beds are being taken up by people who don't need to be there," he said. "And they are in jeopardy of losing their jobs, maybe their families because they are in jail. Jail is destructive.

"What does that accomplish with some kid who made a mistake? Or an adult who had a couple glasses of wine?"

Small has declined to be interviewed over the issue. Larin said she has not responded to the filing.

Larin said most district judges he's encountered in more than 5,000 cases sentence first-timers to a year probation, alcohol education classes, community service, \$1,000 to \$1,500 in fines, \$25 to \$50 a month for probation costs, and in some cases, daily or regular testing to make sure they are not [drinking](#).

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