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HEADLINE: Judges Can Reverse Each Other On Their Own Volition, CA Rules
Dismissing Fears of 'Legal Free-for-All,' Justices Find Revisory Powers Rest
With Court, Not Individual Judges

BYLINE: By Barbara Grzincic; Daily Record Legal Affairs Writer

BODY:

The Court of Appeals yesterday sparked complaints that it is promoting "judge shopping" in ruling one circuit court judge can reverse another's ruling within 30 days -- even when neither party has asked for the change.

Writing for the court, Chief Justice Robert M. Bell reached back to an 1858 slave-valuation case to support the ruling.

Robert H. Bouse Jr., attorney for a reprimanded nurse who brought the action, contends the decision will bring about a "legal free-for-all."

"It opens the door to judge-shopping. If you don't like the ruling, just shop around for a more sympathetic ear," he said.

But Andrew Baida, the assistant attorney general who tried the case, disagreed. "That's not going to happen and it didn't happen here."

"It's basic civil procedure that a court has inherent power to amend or revise its rulings within 30 days," Baida said. "And the principle that one judge can revise another's ruling goes way back."

Back, at least, to the 1858 case Baida pointed out to the court. But in that instance, the original judge had died.

Bouse's client, Nancy Nechay, was a nurse at St. Joseph's Hospital in Baltimore. In a disciplinary action brought by the Board of Nursing, Nechay agreed to a reprimand for putting down a false time of assessment on a patient's record.

Nechay asked the board not to publish the reprimand in its newsletter, the Communicator.

When the board refused, she brought suit in Baltimore City Circuit Court.

The board and Nechay filed cross-motions. Judge Thomas Ward denied the Board's motion to dismiss.

But Ward went further, ordering the board not to publish the reprimand.

Ward relied on the Health and Occupations Code, which calls for publication of revocations and suspensions, but not reprimands. Ward wrote that publication would be an invasion of Nechay's privacy.

Nechay considered that the end of the matter.

But the board considered it a preliminary injunction. Instead of appealing or filing a motion to reconsider, it filed its answer to Nechay's amended complaint.

The case was heard by another circuit court judge, Mabel Houze Hubbard.

Hubbard ruled in the board's favor, since the reprimand was a public record and there was no law against publishing it.

The next round of the fight -- before the Court of Special Appeals -- went to Nechay.

The board then took the case to the state's highest court, which yesterday ruled in its favor.

The circuit court has statutory jurisdiction to revise its rulings within 30 days, Bell's opinion notes.

And, while the rules say those revisory powers are triggered "on motion of any party," that phrase is not found in the statute.

The court held that the power to revise rulings is inherent -- that is, not dependent on a motion of either party.

Citing the slave-valuation case, Bell concluded, "As Robinson demonstrates, jurisdiction is conferred upon the court, and not the individual judge."

The decision also distinguishes between jurisdiction, which Hubbard clearly had, and abuse of discretion in the exercise of jurisdiction.

Problems with judge-shopping belong in the latter category, Bell wrote.

Since Nechay had not addressed the propriety of Hubbard's decision, the Court of Appeals refused to consider it.

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