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Commentary: Judge Mullen doesn't have the option of testifying about Murdaugh case

BY BEVERLY A. CARROLL

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Beverly A. Carroll is chairwoman of the South Carolina Bar Judicial Independence and Impartiality Committee. Provided

The Oct. 9 editorial, “Murdaugh mystery raises questions about SC legal system. We need answers,” says Judge Carmen Mullen should undergo public questioning about a wrongful death settlement she was asked to approve in a matter involving

Alex Murdaugh, who of course has been the subject of intense media scrutiny of late.

We favor transparency in the judicial system, applaud public scrutiny of the courts and of lawyers and fully concur with the editors' observation that public confidence is the foundation of our legal system. However, although the editorial called on the S.C. Supreme Court to "find a way to both allow and require" Judge Mullen to testify, we worry that readers could have read it as a call for Judge Mullen to make that decision on her own.



EDITORIALS

Editorial: Murdaugh mystery raises questions about SC legal system. We need answers.

BY THE EDITORIAL STAFF

Judges are bound by a strict code of ethics and have long been barred from speaking publicly about pending cases. Judge Mullen is not free to subject herself to public questioning. We write to offer some insight into the role of judges in approving wrongful death settlements, which we hope will relieve any sense of unease about our judicial system.

The editorial questions why an order was signed in a matter where no lawsuit had been filed. In fact, all wrongful death settlements are required to be approved by a judge, whether a lawsuit has been filed or not. The applicable statutes allow the parties to reach a settlement before suit has to be filed, but specifically provide that whether suit has been filed or not, it is only valid with court approval.

The statute governing the process for court approval of pre-suit wrongful death settlements provides in part that the “court shall schedule a hearing and receive into evidence those facts that the court considers necessary and proper to evaluate the settlement. After conducting this inquiry, the court shall issue its order either approving or disapproving the proposed settlement. If the settlement is approved by the court, the personal representative has the power to conclude the settlement, including the execution of those documents as the settlement terms contemplate.” This is the procedure that Judge Mullen appears to have followed.

The editorial also suggests that the public needs to know why the order at issue was not filed. Wrongful death settlements are usually uncontested matters, and the attorneys prepare the petition for approval of the settlement and a proposed order for the judge’s consideration. It has long been the practice in South Carolina for an attorney to file an order signed by a judge at a hearing. The attorney, as an officer of the court, takes the signed order from the courtroom and delivers it to the clerk for filing.



COMMENTARY

Scoppe: Tentacles of Murdaugh saga reach beyond SC law enforcement into judicial selection

BY CINDI ROSS SCOPPE

The editorial also says the public needs to know why Judge Mullen recused herself in a criminal matter involving Mr. Murdaugh’s son but not in the matter involving the approval of a wrongful death settlement involving Mr. Murdaugh’s housekeeper.

In South Carolina, disqualification is governed by the S.C. Code of Judicial Conduct, which calls on judges to disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, including instances where they have “a personal bias or prejudice concerning a party or a party’s lawyer or personal knowledge of disputed evidentiary facts concerning the proceeding.”



NEWS

Attorneys seek to question SC judge about millions meant for Murdaugh housekeeper’s sons

BY AVERY G. WILKS AND GLENN SMITH AWILKS@POSTANDCOURIER.COM
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A judge, however, is also required to “hear and decide matters assigned to the judge except those in which disqualification is required.” Accordingly, the decision as to whether judges disqualify themselves is specific to the facts of each case. It is not unusual for judges to recuse themselves from contested matters in which lawyers or their families are parties precisely because, as the editors note, judges often know the lawyers in their communities. Approval of a wrongful death settlement is a different matter, as these are typically uncontested hearings

As the editorial argues, it is important that the public have confidence in our legal system, and regulating the conduct of lawyers and judges is a vital part of instilling that confidence. In South Carolina, the task of regulating lawyers and judges is that of the Office of Disciplinary Counsel, which is a division of the S.C. Supreme Court.

The Office of Disciplinary Counsel is tasked with receiving, screening and investigating all complaints made against both lawyers and judges in South Carolina. Importantly, any lawyer who has knowledge that another lawyer or

judge has committed a violation of the rules of professional conduct or the applicable rules of judicial conduct has an ethical duty to inform the Office of Disciplinary Counsel.

Your readers should be assured that while our legal system may not be perfect, most lawyers and judges in South Carolina go above and beyond on a daily basis to serve their clients and communities. From resolving complicated issues and volunteering services, to helping those in need, to giving hours to educate the next generation on legal principles, we are, as a whole, dedicated problem solvers committed to making a positive difference in South Carolina.

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