

VOL 29 ISS 4 | 0 | INTRODUCTION

THE JUDGE NEEDS A LAWYER

FrankQ. Nebeker, Associate Judge, District of Columbia

Court of Appeals*

[I]t is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequence to himself. Liability to answer to everyone who might feel himself aggrieved by the action of the judge would be inconsistent with the possession of this freedom and would destroy that independence without which no judiciary can be either respectable or useful.¹

Despite our longstanding commitment to the above principle, a present day judge, particularly a trial judge, encounters a new personal and financial risk. I do not mean the diminished purchasing power of judicial salaries which often fail to keep pace with inflation. I refer to a job hazard brought about by the litigation explosion and its handmaiden - the redress neurosis. Whatever a judge does in the courthouse, he runs a substantial risk of becoming embroiled in litigation where he is no longer the dispute-resolver, but rather, the object of the complaint. When this occurs, serious problems arise respecting the nature and source of legal representation for the judge.

It has not been uncommon for judges to be the adversary when parties to a lawsuit have brought extraordinary writs from appellate courts concerning a ruling in their case pending before the judge.² But increasingly, the judge is apt to be sued in separate private actions for damages or equitable relief.³ Moreover, with the advent of judicial disability and tenure commissions, the judge may be called upon to respond to complaints before these disciplinary bodies.⁴ The purpose of this article is to expose and explore the scope of the ethical and practical dilemmas created for the judge by the necessity of obtaining legal representation due to this rapidly growing phenomenon of suits and complaints against judicial officers.



(Copyright © Catholic University Law Review. All rights reserved. Frank Q. Nebeker. Issue 4.)

Footnotes

* Judge Nebeker wishes to acknowledge the willing and able assistance of Mary Ellen Craig, Esq. and Cara Nebeker in the preparation of this article.

¹. Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 347 (1871).

². See generally Note, *Mandamus as a Means of Federal Interlocutory Review*, 38 OHIO ST. L.J. 301 (1977); Comment, *The Use of Extraordinary Writs for Interlocutory Appeals*, 44 TENN. L. REV. 137 (1976).

³. See notes 8-38 and accompanying text *infra*. See generally Feinman & Cohen, *Suing Judges. - History and Theory*, 31 S.C.L. REV. 201 (1980); Note, *Immunity of Federal and State Judges from Civil Suit – Time for a Qualified Immunity?*, 27 CASE W. RES. L. REV. 727 (1977).

⁴. See notes 39-53 and accompanying text *infra*. See generally Symposium - Judicial Discipline and Disability, 54 CH.-KENT L. REV. 1 (1977).

