



The Commonwealth of Massachusetts  
COMMISSION ON JUDICIAL CONDUCT

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BOSTON, MASSACHUSETTS 02108  
(617) 725-8050  
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WWW.MASS.GOV/CJC

April 17, 2007

BY CERTIFIED MAIL

The Honorable Ernest B. Murphy  
41 Glenn Street  
Dover, MA 02030

CONFIDENTIAL

Re: Complaints Nos. 2006-9 and 2006-30


Dear Judge Murphy:

As a result of the Commission's investigation of the above-numbered complaints against you, the Commission directed that a Statement of Allegations be prepared. A copy thereof is enclosed.

Please take note of the Notice of Procedures which is attached to the Statement of Allegations. Pursuant to G.L. c.211C, sec. 5(7) and Commission Rule 6L, you are given 21 days after your receipt of this Statement of Allegations in which to file a written answer. During that same 21 days, you may also request in writing a personal appearance before the Commission at a regular monthly meeting. If you choose to appear before the Commission, you may be accompanied by your attorney and you may speak for twenty minutes. Your statement will be audiotaped. The attached notice also details other rights at this stage of the proceedings.

Our statute, rules and Annual Reports are available on our website: [www.mass.gov/cjc](http://www.mass.gov/cjc). If you need any further information, your attorney is welcome to phone me at 617-725-8050.

Sincerely,

  
Gillian E. Pearson  
Executive Director

Enclosure  
cc: Michael E. Mone, Esq.



## BEFORE THE COMMISSION ON JUDICIAL CONDUCT

### Complaint Numbers 2006-9 & 2006-30

#### STATEMENT OF ALLEGATIONS

The Commission on Judicial Conduct ("the Commission") makes this Statement of Allegations against the Honorable Ernest B. Murphy ("Judge Murphy"), Associate Justice of the Superior Court, pursuant to M.G.L. c. 211C, § 5(5). This Statement of Allegations incorporates Complaint Numbers 2006-9 and 2006-30.

The Commission alleges that Judge Murphy has engaged in willful misconduct which brings the judicial office into disrepute, as well as conduct prejudicial to the administration of justice and unbecoming a judicial officer. This misconduct includes: failure to maintain and observe high standards of conduct in violation of Canon 1A of the Code of Judicial Conduct (Supreme Judicial Court Rule 3:09); failure to avoid impropriety and the appearance of impropriety in violation of Canon 2; failure to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A; lending the prestige of judicial office to advance his own private interests in violation of Canon 2B; failure to conduct extra-judicial activities so that they do not cast doubt on the judge's capacity to act impartially as a judge in violation of Section 4A(1) of Canon 4A; and failure to refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with his judicial position or that may be reasonably perceived to exploit his judicial position in violation of Section 4D(1) of Canon 4D.

The Commission specifically alleges that:


1. On June 3, 2002, Judge Murphy filed a libel suit against the *Boston Herald* and its employees David Wedge, Jules Crittenden, Margery Eagan and David Weber in Suffolk Superior Court.
2. On February 18, 2005 the jury returned a verdict in favor of Judge Murphy against the *Boston Herald* and David Wedge only for \$2,090,00.00. On October 19, 2005, after the defendants filed a motion for judgment notwithstanding the verdict, this amount was reduced by the trial judge to \$2,010,000.00.
3. Judge Murphy used official Superior Court letterhead to handwrite a letter addressed to

Patrick J. Purcell, Publisher of the *Boston Herald*, dated February 20, 2005, regarding his personal litigation (Appendix A).

4. Judge Murphy used official Superior Court letterhead to handwrite a post-script to the letter dated February 20, 2005, which he dated February 19, 2005, regarding his personal litigation (Appendix B).
5. Judge Murphy enclosed the letter dated February 20, 2005 and its post-script dated February 19, 2005 in a Superior Court envelope on which he handwrote "Murphy, J." above the printed return address. Judge Murphy mailed this envelope (Appendix C) to Patrick Purcell at the *Boston Herald*, One Herald Square, Boston, Massachusetts.
6. Judge Murphy wrote another letter to Patrick J. Purcell regarding his personal litigation, dated March 18, 2005, (Appendix D) which he enclosed in an official court stationery envelope (Appendix E). On the envelope Judge Murphy crossed out "Walter F. Timilty, Clerk of Courts" and handwrote "Murphy, J. Superior Court" above the Norfolk County court return address. He mailed it to Patrick Purcell at the *Boston Herald*, One Herald Square, P.O. Box 55843, Boston, Massachusetts.
7. On December 20, 2005, copies of Judge Murphy's letter dated February 20, 2005, postscript dated February 19, 2005 and letter dated March 18, 2005 were filed in Suffolk Superior Court in support of a motion by the defendants in *Ernest J. Murphy v. Boston Herald, Inc. and David Wedge et al.* to vacate the judgment and dismiss the complaint. On December 21, 2005 the *Boston Herald* published excerpts from these letters in the print edition of the *Boston Herald* and published the entire letters on their website. Copies of the December 21, 2005 *Boston Herald* articles are reproduced as Appendix F.

The conduct set forth above, if true, constitutes conduct prejudicial to the administration of justice and unbecoming a judicial officer, brings the judicial office into disrepute, and violates the Code of Judicial Conduct.

For the Commission,



Robert J. Guttentag  
Chairman

Date: April 17, 2007

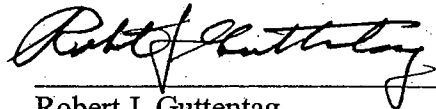
**NOTICE OF PROCEDURES PURSUANT TO STATEMENT OF ALLEGATIONS**

**Complaint Nos. 2006-9 & 2006-30**

The Commission hereby notifies Judge Murphy that, pursuant to M.G.L. c. 211C, § 5(7) and Commission Rule 6L, he has twenty-one (21) days following his receipt of this Statement of Allegations to respond in writing to the charges and, if he wishes, to file a written request for a personal appearance before the Commission.

The Commission also notifies Judge Murphy that, pursuant to M.G.L. c. 211C, § 5(8) and Commission Rule 6P(1), after he is served with this Statement of Allegations, he is entitled to compel by subpoena the attendance and testimony of witnesses through depositions, and to provide for the inspection of documents, books, accounts, written or electronically recorded statements, and other records. The judge may file written material for Commission consideration before the issuance of Formal Charges.

For the Commission,



Robert J. Guttentag  
Chairman

Date: April 17, 2007

# Appendix A

COMMONWEALTH OF MASSACHUSETTS  
THE SUPERIOR COURT  
BOSTON, MA 02109

ERNEST B. MURPHY  
ASSOCIATE JUSTICE

2/20/05

Dear Pat,

I trust you continue (as do I) to honor the privacy of our personal communications in the nature of what is generically referred to as "settlement discussions" in my business.

As you no doubt clearly recollect, de Mike Ditka here warned you against playing "the Team from Chicago" in this particular Super Bowl.

Well, you know, I don't walk around telling that story. I just think it's sad I had to prove it to you. Took a lot out of me.

The reason I write now is that I think you a smart and honorable guy. And since every single thing I told you about what was going to happen in this case thusfar, has happened, maybe, just maybe, I have some credibility with you at this point.

So, here's the deal. I'm heading off to St. Maarten, and I'll be back in town, for business purposes, on Monday, March 7. I will be checking my e-mail [bigemum@aol.com] while I'm down there.

I'd like to meet you at the Union Club on Monday, March 7. (No magic to the date.) (But it needs to be early in that week.)

Here's what will be the price of that meeting. You will have one person with you at the meeting. I suggest, but do not insist, that such a person be a highly honorable and sophisticated lawyer from your insurer.

Under NO circumstances should you involve Brown, Rudnick  
(over)

in this meeting. Or notify that firm that such a meeting is to take place.

I will have my attorney (either Owen Todd or Harvard Cooper) at the meeting. The meeting will be AB-30-WFE-LY confidential and "off the records" between four honorable men.

You will bring to that meeting a cashier's check, payable to me, in the sum of \$3,260,000. No check, no meeting.

You will give me that check and I shall put it in my pocket.

I will say to you, if, at the end of this meeting, you can stand before the God of your understanding, and as a man of honor, ask for the return of that check, I'll flip it back to you.

And then, I shall explain to you why it is in your distinct business interest to rise from the table, shake my hand, and let me walk away with that check.

Because it is, Mr. Purcell, in your distinct business interests to do so, in my considered opinion; and I have not the slightest apprehension of failure of my ability to make you (and your master) concur in that assessment.

Sincerely,

Ernie Myers

# Appendix B



COMMONWEALTH OF MASSACHUSETTS  
THE SUPERIOR COURT  
BOSTON, MA 02109

ERNEST B. MURPHY  
ASSOCIATE JUSTICE

2/19/05

P.S. If you conclude you have no interest in the meeting I propose, I ask that you throw the letter away and pretend it never was received. I am NOT copying this letter to anyone.

I consider it private settlement discussion between principals to a transaction, and I assure you it provides you with no tactical or strategic advantage in the case.

Else, Mr. Purcell, you probably recognize by now, it would never have been written.

I am simply trying to exit this matter NOW, to my maximum advantage, and what I believe, Pat, is yours as well.

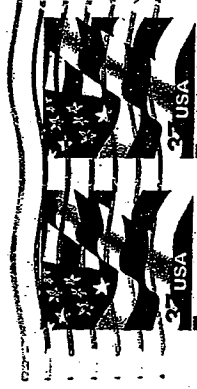
It would be a mistake, Pat, to show this letter to anyone other than the gentleman whose authorized signature will be affixed to the check in question.

In fact, a BIG mistake. Please do not make that mistake.



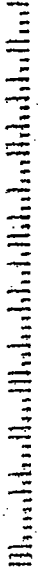
# Appendix C

*Murphy J.*  
COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT  
40 THORNDIKE STREET  
CAMBRIDGE, MASSACHUSETTS 02141



*Mr. Patrick Purcell  
Publisher  
The Boston Herald  
One Herald Square  
Boston, MA 02118*

**PERSONAL  
&  
CONFIDENTIAL**

0211812257 

# Appendix D

3/18/05

Dear Pat,

Read the article in the Globe today. Believe me, I take no joy from your troubles.

I'm going to, once again, principal to principal, as "settlement negotiations" - off the record - just between you and me - tell you something which may help you in your decision-making. Something for nothing.

And that is . . . . you have a ZERO chance of reversing my jury verdict on appeal.

Anyone who is counselling you to the contrary . . . is WRONG. Not 5% . . . ZERO.

AND . . . . I will NEVER, that is as in NEVER, have a dime from what you owe me.

You and/or your insurer want to pay me \$331,056/yr for the next two or three years while you spend another 500 large tilting at windmills in the appellate courts . . . . be my guest.

You are lucky, Mr. Purcell that that jury came back at 2 million. I was betting on 5.

Ernie

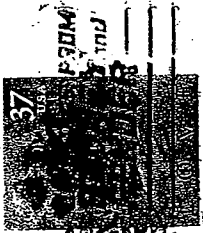
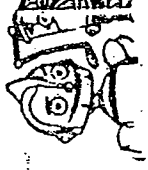
# Appendix E

Murphy, J.



~~MASSACHUSETTS~~  
~~COURT OF THE COMMON PLEAS~~  
~~Superior Court~~  
Superior Court  
Norfolk County  
650 High Street  
Dedham, MA 02026-1855

**PERSONAL**  
**CONFIDENTIAL**



Mr. Patrick Purnell  
Publisher, Boston Herald  
One Herald Square - PO Box 55843  
Boston, MA 02205-5843

02205-5843

# Appendix F





\*\* 2/20/05

So, here's the deal. I'm heading off to St. Maarten, and I'll be back in town, for business purposes, on Monday March 7. I will be checking my e-mail while I'm down there.

I'd like to meet you at the Union Club on Monday, March 7. (No magic to this date.) (But it needs to be early in that week)

Here's what will be the price of that meeting. You will have one person with you at the meeting. I suggest, but do not insist, that such a person be a highly honorable and sophisticated lawyer from your insurer.

Under NO circumstances should you involve Brown, Rudnick in this meeting. Or notify that firm that such a meeting is to take place.

I will have my attorney (either Owen Todd or Howard Cooper) at the meeting. The meeting will be AB-SO-LUTE-LY confidential and "off the record" between four honorable men.

You will bring to that meeting a cashier's check, payable to me, in the sum of \$3,260,000. No check, no meeting.

You will give me that check and I shall put it in my pocket.

I will say to you, if, at the end of this meeting, you can stand before the God of your understanding, and as a man of honor, ask for the return of that check, I'll flip it back to you.

And then, I shall explain to you why it is in your distinct business interest to rise from the table, shake my hand, and let me walk away with that check.

Because it is, Mr. Purcell, in your distinct business interests to do so, in my considered opinion; and I have not the slightest apprehension of failure of my ability to make you (and your insurer) concur in that assessment.

Sincerely,

Ernie Murphy

\*\* 2/19/05

P.S. If you conclude you have no interest in the meeting I propose, I ask that you throw the letter away and pretend it never was received. I am NOT copying this letter to anyone. I consider it private settlement discussion between principals to a transaction, and I assure you it provides you with no tactical or strategic advantage in the case.

Else, Mr. Purcell, you probably recognize by now, it would never have been written.

I am simply trying to exit this matter NOW, to my maximum advantage, and what I believe, Pat, is yours as well.

It would be a mistake, Pat, to show this letter to anyone other than the gentleman whose authorized signature will be affixed to the check in question.

In fact, a BIG mistake. Please do not make that mistake.

E

\*\* 3/18/05

Dear Pat,

I'm going to, once again, principal to principal, as "settlement negotiations" - off the record - just between you and me - tell you something which may help you in your decision-making. Something for nothing.

And that is . . . you have ZERO chance of reversing my jury verdict on appeal.

Anyone who is counselling you to the contrary...is WRONG. Not 5% . . . ZERO.

AND . . . I will NEVER, that is as in NEVER, shave a dime from what you owe me.

You and/or your insurer want to pay me \$331,056/yr for the next two or three years while you spend another 500 large tilting at windmills in the appellate courts . . . be my guest.

You are lucky, Mr. Purcell, that that jury came back at 2 million. I was betting on 5.

Ernie  
JUDGE FOR YOURSELF . . .

The following are excerpts of letters written by Judge Ernest B. Murphy to Herald Publisher Patrick J. Purcell.

\*\* 2/20/05

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Ernie

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*Author: GREG GATLIN  
Section: News  
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## Text of judge's letters

Wednesday, December 21, 2005 - Updated: 08:13 AM EST

2/20/05

So, here's the deal. I'm heading off to St. Maarten, and I'll be back in town, for business purposes, on Monday March 7. I will be checking my e-mail while I'm down there.

### More on: **Murphy letters**

[Herald: Toss libel verdict: Claims judge trying to 'bully' paper into ceding right of appeal](#)

[Gallery of Judge Murphy's letters](#)

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Ernie

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