

Members
Iowa Judicial Qualifications Commission
1111 East Court Avenue
Des Moines, IA 50319

April 19, 2004

Dear Commission Members,

I am in receipt of Commission's Executive Secretary David K. Boyd's letter dated March 12, 2004, acknowledging receipt of my complaint against District #3 Judge Nancy L. Whittenburg. Thank you for this acknowledgment.

My complaint includes her violations of Canon 5 of the Iowa Code Of Judicial Conduct, requiring a judge to refrain from "financial and business dealings that tend to reflect adversely on impartiality...or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves" and requires him/her to "...manage investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, investments and other financial interests that might require frequent disqualification should be divested." My complaint also includes her violations of Canon 3 which states, "The judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding".

I am not sure how much of an investigation the Commission conducts in response to such a complaint as mine, but please let me supplement the material I sent previously with the following information and documents.

I wrote then-District Judge Appointee Nancy L. Whittenburg an open letter on December 13, 2003 and December 15, 2003 asking her to sell her interest in the family beer business - Chuck Whittenburg Distributor, Inc. (CWDI) - which I had learned from a Spencer businessman she owned. These letters were sent to her official eMail address as a Clay County Magistrate Judge - Nancy.Whittenburg@jb.state.ia.us. They were open letters as she has previously not cooperated or responded in any fashion to my previous inquiries regarding her actions as a lawyer and a GAL. As they were open letters they also were sent to a multitude of lawyers, District Judges, media outlets, law enforcement officers, educators, and general citizens. Never once during this time did she write me and refute or deny my claims regarding her interest in the beer business. I am willing to release copies of these eMail letters to any of your investigators.

On the afternoon of December 16, 2003, I received a telephone call from a gentleman identifying himself as "Charley Whittenburg, Nancy's brother". Though I didn't then nor have I ever had his eMail address, someone had apparently forwarded my eMail about his sister on to him and he called to "correct the record". He wanted me to make it clear to "whomever I was sending my eMail out to" that his sister was not an officer (as I had erroneously reported in my December 13, 2003 letter) but was a director of CWDI. Further he wanted me to know that his sister's ownership interest was not in the form of the more ordinary corporate shareholder (ie Sub C) but that her corporate ownership form was held as a "Sub S corporate shareholder." I was more than pleased to apologize and correct the record on both points to my readers and did so in yet another open letter to Judge-Appointee Nancy L. Whittenburg, *et al* which I sent out that same day, identifying her brother's call as the catalyst to that letter. I am assuming that Judge-Appointee Whittenburg had been reading my letters as

she would be the likely candidate to have forwarded them on to her older brother.

This all becomes more relevant as *Des Moines Register* reporter Rekha Basu did a very shoddy job of reporting on this matter March 17, 2004, and for those of you who might have read it, I fear it may leave a false impression that I know little of what I am talking about. Let me explain. In criticizing a political tract I wrote about this situation, Basu attempted to portray that I have my facts wrong and, more so, that I have the wrong Nancy L. Whittenburg. In her column she wrote that *"A woman who answered the phone at Chuck Whittenburg Distributor in Spencer said Judge Nancy Whittenburg is the owner's sister and 'she's not involved in the company at all,' and that the owner's wife is also named Nancy. A Nancy L. Whittenburg is listed with the secretary of state's office as director of the company and co-owner with Charley Whittenburg. Voter-registration logs show two Nancy Lynn Whittenburgs in Spencer, with different addresses, birth dates, Social Security numbers and party affiliations. The one with the judge's birth date is not the one who shares an address with Charley Whittenburg."* A bit later Basu charges me with "misidentifying the owner" of Chuck Whittenburg Distributor, Inc. as Judge Nancy L. Whittenburg.

Yes, there are two Nancy L. Whittenburg's living in Spencer, Iowa. One, the new District #3 Judge is the sister of Charley Whittenburg and the wife of Gary Nelsen. The other Nancy L. Whittenburg is the wife of Charley Whittenburg and is a dental hygienist.

Yet, in addition to Basu's statement contradicting what Judge Whittenburg's brother told me on December 16, 2003, there are several problems with her conclusions that will quickly show it to be false. First, she takes the assurance of "a woman who answered the phone". This is hardly a rock solid authority in the matter. Next Basu says the secretary of state's office lists the other Nancy L. Whittenburg as "co-owner." I have never known the secretary of state's office to list corporate ownership interests nor can I find any currently while doing corporate searches on their website. Registered agents, directors and officers of corporations are routinely found, but not ownership interests. So how could she report such from these records? How do we determine for sure which Nancy L. Whittenburg is which? Consider the following evidence.

At approximately 3:30pm on March 5, 2004, Judge Nancy L. Whittenburg was sworn into office at the Clay County Courthouse. During the ceremonies she was pleased to introduce members of her family to the crowd gathered to join her. I was there and heard her introduce her husband, Gary Nelsen, and their son, Harry. Please note a copy of a page from the most recent Spencer phone book where a one Gary Nelsen is listed as living at **1209 4th Ave. West**, Spencer, IA. (Exhibit A) Make note of this address. It will appear again.

Please also see a copy of the 2002 Spencer, Iowa City Directory. You will note under the entry for Gary W. Nelsen that his wife's name is listed as "Nancy Whittenbr atty" and that his employment is listed as "sales Chuck Whittenburg Distr". Confirming her announcement made at her swearing in, their son is listed as Harry and their residential address is **1209 4th Ave. West**. (B)

On another page in this Directory enclosed is the listing for the other Nancy L. Whittenburg, a dental hygienist who shares a residential address with her husband Charley, at 1608 West 4th Street in Spencer, IA. (C)

Please also find a current copy of the Clay County Iowa Assessor's Owner Entity ID #005720000 and Parcel ID #64096371227600400 report which lists "Nelsen, Gary W & Whittenburg, Nancy L." as owners of a property whose address is listed as **1209 4th Ave. W** Spencer. (D)

If Basu had done a little more searching of voter's records for her story she would have found what I found from the Secretary of State's Voters list. Please see the attached schedule. (E) As before, pay close attention to the addresses of both Nancy L. Whittenburgs. A telephone call to the Clay County Auditor's office also found that the Nancy L. Whittenburg who lives at **1209 4th Ave. W** with Gary Nelson also has the Social Security number 482-76-8107.

In records found at the Clay county clerk of court's office and at the secretary of state's office I am able to further clarify matters. The first from the Clerk's office is the "Report and Inventory" of the estate of Charles T. Whittenburg (File # 03211 ESPR011770). (F) Please note under item number 6 that Nancy L. Whittenburg of **1209 4th Ave. West, Spencer, IA** is listed as the decedent's daughter and that Charley D. Whittenburg is listed as his son, making them siblings, not spouses. Note that Charley's address is at 1608 West 4th Street, where Nancy the hygienist also lives. You will also note that the daughter of the decedent has the same Social Security number as that found on the voter's record of the one living at **1209 4th Ave. W** with Gary Nelson.

Then note the enclosed Schedule G from the decedent's same estate file. (G) You will see that Nancy L. Whittenburg, daughter of the decedent (and again sibling to Charley Whittenburg) was gifted 12 shares of stock of CWDI for a total value of \$125,000 on November 19, 1996.

Please note the enclosed copies of the biennial reports for the CWDI corporation (IA #43768) filed January 9, 2002 (H) and again on January 16, 2004 (I) with the Iowa secretary of state. Note that this "Nancy L. Whittenburg" is the one in both reports who resides at the same address as the one listed on the reports above with her husband Gary Nelsen at **1209 4th Ave. West, Spencer, IA**. Note on these two reports that her brother Charley Whittenburg's address is, as before, 1608 West 4th Street, an obvious fact that Basu failed to report in the *Register*, even though she had reviewed these records at the Secretary of State

Further, please find a copy of the CWDI "Renewal Application For Wholesale Beer Permit" filed March 15, 2004, with the Alcoholic Beverages Division, State of Iowa. (J) Note the date it was filed was 10 days after Judge Whittenburg took her public oath of office and nearly 45 days after she had signed her oath privately. Also look closely and you will find that according to their application, this same Nancy L. Whittenburg yet today owns 25% of this beer distributor company and, most importantly, is the one who lives at **1209 4th Ave. West, Spencer, IA** with Gary Nelsen, her husband whom she introduced at her swearing in ceremony.

As the evidence above shows, Judge Nancy L. Whittenburg, the daughter of the late Charles T. Whittenburg, the sister of Charley D. Whittenburg, a Clay County voter, the gift recipient of \$125,000 worth of CWDI shares of stock, a current corporate director of CWDI, and the woman named a 25% owner in CWDI's recent corporate application to the state of Iowa for a wholesale beer permit - in each of these capacities listed above - along with her husband Gary Nelsen - and their son Harry together live at the same address - **1209 4th Ave. West, Spencer, IA**. Again, her brother Charley lives at 1608 West 4th Street, a completely different address from his sister and the one he shares with the other Nancy L. Whittenburg, his wife, the dental hygienist. Charley's wife is not listed as an owner in any capacity on any public documents that I could find.

I wonder if the woman who answered the phone at CWDI when Basu called and said Judge Nancy L. Whittenburg "is not involved in the company at all" meant that the Judge is not involved in the management or day to day operations of CWDI, which is not uncommon for absentee owners who have their own careers. If this woman is a receptionist, she also may very likely not know the corporate

owners of the company and wouldn't presume to be commenting on that. Further, if this 'woman on the phone' did make an operations vs. ownership distinction we will likely never know if Basu put a little twist on the report to leave this out, so as to "establish" that the Judge doesn't own any part of CWDI. And it is possible that the "woman on the phone" did know and simply lied. I stand with the Judge's brother Charley's phone call to me and the evidence above – District #3 Judge Nancy L. Whittenburg does own 25% of the family beer business.

Finally, I have written to Judge Nancy L. Whittenburg twice by eMail on April 13 and the 14th of this month and mentioned that the media is saying I have the wrong Nancy L. Whittenburg listed as owner of a part of the family beer business and asked if she could clarify this for me. Even though she eMailed back to me twice the "Read Receipt" confirmation confirming she had received my eMail inquiries, she has not answered this simple question. I think her silence is telling.

This brings me back to the question I have been raising from the beginning. If one fourth of all earnings from this beer distributorship pass directly (without corporate taxation first) into the hands of Judge Nancy L. Whittenburg to join with the funds she receives from her state salary as a Judge, doesn't she have more than the appearance of a conflict of interest with the high volume of OWI cases she will hear? Before any OWI or related cases are heard by Judge Whittenburg, will all District #3 prosecutors have to inquire, "Your Honor, did your customer sell the beer to the accused?" What of civil dram shop cases? What of her husband's involvement in sales at her beer business? Is this not a conflict of interest with the Canons listed?

Please consider this an addendum to my original complaint and please tell your investigators to feel free to contact me if they want further information.

Could you also send me a summary of the Commission's track record over the last 5 years? Ie. How many complaints were filed during this period? Of those, how many were dismissed finding no cause? Of the remaining complaints, how many involved sanctions brought against a judicial officer and to what degree(s)?

Sincerely,

Paul R. Dorr, Director
Cameron Arnold Judicial Reform Initiative
a special project of Rescue the Perishing

Enc.: Ten

The Cameron Arnold Judicial Reform Initiative is a special project of Rescue the Perishing of Ocheyedan, IA. More of a Jefferson/Jacksonian than a Hamiltonian director Paul Dorr has been working since 1988 to educate voters of the encroaching "irresponsibility" (as Andrew Jackson coined it) of the judicial branch of government. One behind-the-scenes supporter of Dorr was Cameron Arnold, a former Assoc. District Judge in this district and past President of the Iowa Judges Association. Arnold was an avid supporter of Dorr's reform initiatives until he passed away in 1998 and to this day Dorr enjoys the endorsement of "Cam's" widow.