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Lawyer asks court to reassign case after judge's call

AUSTIN (AP) — An Austin lawyer has asked the 3rd Court of Appeals to reassign his case, saying Justice Jim Brady solicited the lawyer's campaign support two days after hearing oral arguments in the case, before a ruling was handed down.

The lawyer, Robert Stokes, did not accuse Brady of anything wrong. Stokes told the *Austin American-Statesman* there "was no discussion of the merits" of his case when Brady called him.

Brady said Wednesday, "I think Mr. Stokes is overreacting. Other than that, I really would have no further comment."

Stokes told the court in a motion filed last week that the case should be reassigned because of his "duties to his client and the impartial administration of justice by avoiding even the appearance of impropriety."

The court hasn't acted on the request by Stokes, who is on the campaign committee of Brady's primary election opponent, nor has it ruled on his case involving a worker's compensation claim.

Ray Chester, the opposing attorney in the case, said Brady's action "very definitely bothered me."

"I don't know if there was anything improper about it or not, but it certainly has the appearance of impropriety," he said.

The case was won at the trial court level by Chester's firm, Pluymen & Bayer, against Service Lloyds Insurance Co. Stokes, representing Service Lloyds, is a member of the law firm of Flahive, Ogden & Latson.

In his motion, Stokes said he argued his case Nov. 4 before a three-judge panel of the Austin-based 3rd Court of Appeals.

On Nov. 6, Stokes said, Brady called him, complimented him on his oral argument and, "after several moments of personal conversation, having nothing to do with the present appeal, Justice Brady reminded me of his upcoming re-election campaign."

"He asked whether his opponent had campaigned at our firm," Stokes said. "I replied that I believed he had spoken with some attorneys in our firm."

"Justice Brady pointed out that most firms in Austin were leaving decisions about support in the race up to individual attorneys. He asked whether I would be able to support him in his race."

"I replied that any such decision would need to be made by the firm partners and advised him that I would relay his request to the firm. Justice Brady thanked me and once again congratulated me on oral arguments for this case."

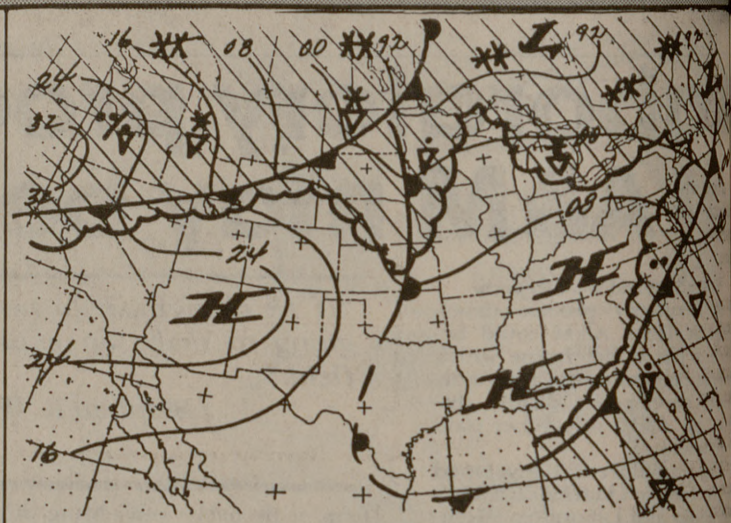
Brady told the *Austin American-Statesman* he had not asked Stokes for a campaign contribution and Stokes said nothing in his motion about contributions.

The judge also told the newspaper that he "merely asked him if Mr. Flahive (T.P. Flahive of Stokes' firm) had been contacted by my opponent, and that's all I asked him, and I told him I assumed I would get equal time."

"That's all I said," Brady said. "There was no solicitation whatsoever. I didn't make any request to him to do anything for me."

Earlier this year, a libel ruling written by Brady in favor of the *Wall Street Journal* was withdrawn by the court after Brady issued a news release extolling his opinion in the case, which officials said still was subject to court action.

Weather Watch



- ☁ - Lightning
- ☁ - Rain
- ☁ - Ice Pellets
- ☁ - Fog
- ☁ - Snow
- ☁ - Rain Shower
- ☁ - Thunderstorms
- ☁ - Drizzle
- ☁ - Freezing Rain

Sunset Today: 5:24 p.m. Sunrise Friday: 7:11 a.m.

Map Discussion: High pressure will continue to produce pleasant weather through the southlands while post-frontal showers will be observed in the Pacific Northwest and into the Great Basin. The low pressure system exiting the upper East Coast and the low over Ontario, Canada, will produce snow activity from the central and eastern Great Lakes over New England.

Forecast:
Today: Fair and mild with a high temperature of 68 degrees and winds from the east at 8 mph.
Tonight: Clear and cool with the low temperature Friday morning expected near 40 degrees. Winds will be southerly at 3 to 5 mph.
Friday: Increasing cloudiness and continued mild with a high temperature of 69 degrees and west-southwesterly winds of 8 mph, gusting to 15 mph.

Weather fact: Chinook — a warm, dry wind on the lee side of a mountain range. Following an intense cold period, a chinook wind may raise the temperature by 20 to 40 degrees Fahrenheit in as little as 20 minutes.

Prepared by: Charlie Brentner
Staff Meteorologist
A&M Department of Meteorology

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Judge bars forced fitness tests for firefighters

HOUSTON (AP) — A state district judge has barred the fire department from forcing firefighters to take a physical fitness test that they claim could cause heart attacks.

State District Judge Alice Trevathan said the time limit of about five minutes on the Houston Fire Department's planned obstacle course makes the test unallowable.

A proper time limit for completing the course, Trevathan said Tuesday, would be closer to eight minutes.

Trevathan wrote that there may be a need for the test to reasonably evaluate the fitness and knowledge of firefighters, but she also said the test in its current form is unreasonable.

"The evidence indicates that seven to eight minutes would be a reasonable time limitation for the test as outlined," she said.

The proposed test includes six tasks including dragging a 2 1/2-inch hose filled with water about 50 feet; removing a ladder from a rack, walking about 30 feet with it and then putting it back; carrying extraction equipment called the "jaws of life" about 30 feet, and pushing a cart through a small tunnel, said Sam Price, spokesman for the fire department.

"It can be done," Price said Wednesday.

People wanting to become Houston firefighters have to undergo a different physical and agility exam before getting a job with the department, he said.

Firefighters were told about the planned physical tests in May, and the agility and endurance tests were scheduled to begin Nov. 30.

Lester W. Tyra Jr., president of the Houston Professional Firefighters Local 341, said the union was pleased with the judge's ruling.

A lawsuit was filed by Tyra in October that alleged the test would place firefighters in high stressful situations that could cause heart attacks or injuries from stress on their cardiovascular systems.

Assistant City Attorney John Fisher said no decision has been made whether to take the case to trial to contest the ruling or seek a compromise with firefighters.

"If too much time is given, the tests may prove anything," he said.

Gene Jones, an attorney for the firefighters said raising the allowed time for the tests would still not be enough without offering pretest medical examinations and treadmill stress tests. Those tests, he said, would cost the city at least \$270,000 for the 2,700 firefighters.

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