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## HOUSTON CHRONICLE ARCHIVES

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## Dead legal battle lives on in allegations of judicial impropriety

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A legal battle between John B. Wing and CRSS Inc. over a 1986 consulting contract came to a stormy conclusion last month, but questions of impropriety by the lawyers and judges involved in the case linger.

The first judge to handle the case was hit by allegations of conflict of interest. The case was transferred to another judge, who also was accused of having a conflict. At the finish, state District Judge Sharolyn Wood was presiding over the lawsuit.

Wood, voicing anger at allegations that key documents had been destroyed by the defense, repeatedly declared that the company was in criminal contempt. She ordered the so-called ""death penalty"" sanction that stripped CRSS of its defense in the case.

However, Wood was also the same judge who had been represented five years ago by a law firm whose partner was now the lead attorney for Wing in the case before her. That representation in a high-profile suit over judicial redistricting was worth more than \$400,000, the firm argued in trying to win compensation for representing Wood and other judges.

The Wing case ended in a sudden settlement. The issue of possible conflicts of interest was never resolved, and Wood did not press forward with her contempt actions against CRSS.

""It is the most unusual case of obstruction of the discovery process I have ever seen," Wood said. ""Now it is after-the-fact sour grapes from those attorneys. There were avenues for them to appeal if they felt wronged. Instead, they conduct a scurrilous, baseless attack on the judiciary.""

The transfers of the case among judges raises concern from state District Judge David West, the county's chief administrative judge. West said he tried to have judges route cases through neutral administrative judges to ""cleanse"" the process of any possible appearance of impropriety or bias.

CRSS attorneys Dana *LeJune* and Jeff Nobles were attempting to have an appeals court remove Wood on other grounds when the case ended. They sharply questioned why she was so insistent on immediately bringing a 10-month-old case to trial at a courthouse where cases may take three years or longer to get to trial.

""The law says that judges are to avoid even the appearance of partiality," Nobles said. ""We believe there was a very legitimate question about that in this case.""

Wing attorney John E. O'Neill scoffed at the arguments. ""I don't think CRSS settled because they had a good case and that they properly produced the documents and they were somehow blameless in all this," he said. ""It wasn't a

situation where they didn't look for any conceivable way to recuse the judges. Judge Wood believed the system was violated by them, and she took the appropriate action."

Wood said she was determined to bring the case to trial to hold to the previous schedule set for the case.

CRSS says it only sought to have the case randomly assigned to an impartial judge, rather than having it shuffled from one judge - irate over a defense recusal motion - to another of his or her choosing.

Wing, an energy consultant, signed a one-year agreement with CRSS in 1986. It called for him to receive about \$150,000, plus a small percentage of profits from his work in bringing in business from private electrical generating contracts.

Wing sued last year, alleging that CRSS had not paid him his full share for the contracts. CRSS said he had been fully compensated.

With more than six years elapsed since the contract, disputes began flaring over the legal discovery process - the required exchange of documents and records relating to the case.

CRSS argued that it complied as fully as possible with demands for documents. The international firm had 19 warehouses of records stretched across the nation, and had been in the process of paring that storage operation down to three facilities to reduce some \$350,000 annually in warehousing costs.

The suit had been randomly assigned by the district clerk's office to state District Judge Russell Lloyd. Troubles began last July. *LeJune* said he became concerned about potential conflicts by the judge when he learned that Lloyd's wife had been dismissed as a CRSS company attorney in 1992. By all accounts the departure was acrimonious.

The CRSS attorneys met with Lloyd, who was visibly angered by having his wife drawn into what had been a rather routine case at that point.

Lloyd and O'Neill said no formal recusal motion was ever filed, although CRSS attorneys insist it was filed before they conferred with the judge on it. They say they believed he had voluntarily recused himself, which would send the case back into the court system for reassignment to the next available judge.

"I wanted it out of my court as quickly as possible, and a transfer is the quickest way to get it out," Lloyd said. "I transferred it to (state District) Judge Elizabeth Ray because she is a responsible, experienced attorney and judge. I respect her judgment."

The August transfer was challenged in December. CRSS attorneys said they learned then that it had not fallen in Ray's court randomly. They also alleged that Lloyd was behind severe actions meted out by Ray. For failing to abide by discovery orders, she hit CRSS with penalties - \$10,000 plus \$1,000 for every day of noncompliance.

CRSS filed a recusal motion against Ray, citing allegations that Lloyd "had transferred the case to a buddy."

By all appearances, Ray was only caught in the middle of a fight. She pointed out that she and Lloyd were not even social friends. Ray challenged defense attorneys to find a single connection between the two, a challenge that went unanswered.

"It was completely out of the blue," Ray said. "But I don't ever want there to be any appearance of impropriety in this court."

In January, Ray voluntarily removed herself from the case. The order said she did not want it construed that the action gives "any credence to the baseless and false accusations made by the defendants."

Ray said later that she was also concerned at finding out that the case had not arrived in her court randomly. She said that her recusal was based on concerns from Judge West about the transfer.

It also was no random occurrence that the case went next to Wood's court. As the new administrative civil judge, Wood contacted the regional administrative judge, Thomas Stovall. Wood's order said that Stovall directed her to take the case. Stovall has said Wood recalled her saying that no other judge wanted it.

""We were shocked," Nobles said. ""The first word from Judge Wood was that the case was going to trial next week - period."

Instead, mounds of boxes were carted in for an accelerated discovery hearing. Wood ruled that CRSS had intentionally concealed or destroyed documents, while CRSS argued that it had complied with the requests and that the materials were available from other sources.

Attorney Joel Androphy was called in by CRSS to defend against the contempt findings. He said he was astounded at the proceedings under way. Wood, he said, began issuing criminal contempt findings ""until I couldn't keep count." He said the actions should require hearings before impartial judges, with a third party prosecuting. ""I wasn't aware in our country these could be done off the cuff, without adequate procedures. And I don't think the Supreme Court believes that, either."

But O'Neill said the criminal contempt action was entirely justified. ""Four months after they were ordered to produce documents, they had pulled them out of storage and concealed them," O'Neill said. ""Other documents had simply disappeared. She took the action that was warranted."

""When compelled to account for their conduct, they started a personal attack," Wood said. ""It was amazing."

She and O'Neill discount the arguments raised by the company about the earlier representation of Wood by O'Neill's old law firm.

O'Neill said he had never worked in the representation of the judge, and Wood and O'Neill noted that some of the attorneys from the previous law firm were now employed by firms involved in the defense of CRSS.

Wood had intervened in a federal lawsuit challenging the state's at-large system of judicial elections. That system was upheld by a federal appeals court.

Wood said she lent her name so area attorneys could intervene in the suit. But she said her participation came with the clear understanding that she would not pay the bills amassed by the attorneys representing her, J. Eugene Clements and Evelyn Keyes. Wood said she agreed for them to seek more than \$400,000 from the government for their work on the case, a request for payment that was denied by a federal court.

Attorneys for CRSS said the special relationship between the judge and that firm was there, whether they provided her with free representation or not.

As for the final settlement in the Wing case, *LeJune* said it was a business decision, prompted by the advice of outside attorneys brought in to assess the case.

""They decided it was time to the cut the losses, before things got any worse," Nobles said.

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