

Board tackles judicial questions in Hermitage

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HERMITAGE — The process by which judges' conduct in the courtroom is reviewed and prosecuted is too slow and secret to be useful, a central Pennsylvania district attorney told a board of lawyers and judges investigating the issue Friday — and the problems are worse in rural counties with fewer judges on the bench.

District Attorney Robert Buehner Jr. of Montour County told members' of the commission's sub-committee on the judiciary that broad changes to the state's judicial conduct review process are necessary.

"All of this was supposed to establish a system to investigate, prosecute ... suspend, remove and (impose) other sanctions for disciplining judges. To say that this ... needs revision is an understatement."

Buehner's testimony Friday in Hermitage — at the commission's final hearing — was remarkable both for its candor and because it came from a single citizen, members of the sub-committee said.

"You underscored a problem I don't currently have an answer for," said Commission Chairman James G. Colins, a former Commonwealth Court Judge who also served for five years on the Judicial Conduct Board — two of them as the board's chairman.

Colins, who retired in 2007 as the longest-serving member of the state's 38-year-old Commonwealth Court, said he was "probably as familiar, if not more, than anyone," with the inner workings of the board Buehner characterized as too slow, secret, and fraught with political pitfalls to be effective.

Buehner said his effort to report misgivings about the conduct of

former Montour County President Judge Scott Naus in 2008 — he said his complaint to the board detailed nearly 100 instances of "serious violations of the Canons of Judicial Conduct" by the judge — has effectively cost him his job.

More than two years after filing the complaint Buehner said he hasn't received any updates from the board about the case, which caused Naus to resign from his position as president judge in the county.

"Two years is clearly too long," Colins said of the time it took the board to move from receipt of Buehner's allegations to deciding whether to file former charges against the judge.

Buehner said political attacks leveled against him by Naus' lawyer forced him to abandon a bid for a sixth term in office. That lawyer al-

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leged Buehner and other court officers and judges conspired to remove Naus from the bench in order to assume his position.

Buehner said he decided not to run this year so he could "come forward and testify without being attacked," because ethics restrictions prevented him from responding to the lawyers' allegations.

"I couldn't defend myself," he said.

Today some information about the case is public because certain government forms, like an application for a senior judgeship Naus filled out after resigning his bench, have to be released upon request and contain general information about the complaints.

For example, Naus answered 'yes' on the form to a question asking whether he had ever resigned a judicial commission to avoid prosecution or the filing of charges by the conduct



board. It is clear, then, that the board had decided to recommend filing formal charges against Naus.

But other information, including specifics about Buehner's allegations, how the board went about investigating them what charges the board would have recommended filing, are still private.

Colins said they will probably remain so, given the structure of Pennsylvania's constitution.

"You want to know, I want to know; under the current system neither of us will," Colins said. "It (the judiciary) is the only agency that has constitutional secrecy."

The remarks represent a severe break from Colins' former position on judicial independence.

In 2007 he resigned from the Commonwealth Court after 23 years, saying he was disturbed by "political attacks" on judges' decisions and promising to push back against an "increasing threat to the independence of the judiciary."

Friday he drew distinctions between how the board is run today ver-

sus during his tenure — and characterized Buehner's complaints as endemic to rural court systems with fewer judges and prosecutors staffing courthouses.

"When I was chairman we didn't have these problems," Colins said.

He went on to say "These retaliation issues don't exist in counties like Allegheny and Philadelphia," because attorneys routinely tell judges about complaints they've filed and self-recusal in those instances is "almost automatic."

Other members of the sub-committee, including commission vice-chair attorney John Hanna, of Indiana, Pa., praised Buehner's "boldness" and "courage" and called his testimony "discouraging" and "embarrassing."

"Given rural counties ... and the power and authority president judges have," alterations to either the board's inner workings or the dynamics of judicial commissions — such as imposing a mandatory rotation of president judges between counties — should be considered, Hanna said.