

Kenneth Ellman Commenting on Wall Street Journal Law Blog

In reference to article:

**A Dallas Lawyer's Social Contacts With Arbitrator Prove Costly**

By Nathan Koppel, Wall Street Journal, July 1, 2011, 3:41 PM ET

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From Kenneth Ellman, [email:ke@kennethellman.com](mailto:ke@kennethellman.com), Box 18, Newton, NJ 07860

In reference to "A Dallas Lawyer's Social Contacts With Arbitrator Prove Costly", it is very clear to me and it should be clear to any person with knowledge of human nature that:

1. Whether Arbitrator or Judge the trier of fact must not have a relationship whether business or social with the parties. That should not even be subject to debate. As to relations with the attorney for the parties that also must be addressed.

2. If the trier of fact does not have a relationship with the parties but does have a relationship with one of the counsel, it must be fully disclosed. It must be fully disclosed in all respects as the parties cannot investigate and seek replacement or recusal of the trier of fact unless they are fully informed of ALL the details of the relationship. That is why it is so critical for ALL prior contacts and communications to be fully revealed before trial so that a complete record can be made and the parties can take the action they deem necessary. Failure to make full disclosure should cause the entire proceeding to be a nullity and there should not be any second guessing. I am very suspicious of any trier of fact who would fail to fully disclose all contacts with counsel or parties. No exceptions.

3. The respect accorded our Justice system is directly related to the integrity of the system. When the trier of fact has had previous contact with Counsel (outside of the Courtroom), this will immediately raise an inference of a relationship. It is far better to just assign a new trier of fact so that the inference of a relationship and the inference of unfairness does not even have to be investigated.

4. Why don't we all admit what we know, that prior relationships, even so called social relationships, can have an effect on the trier of fact and many persons seek advantage in just such a manner. I have seen it myself and in self defense have also done so.

5. This problem is a little dirty secret of all legal proceedings and must be resisted if we want our legal system to have the confidence of the community and nation. Full disclosure and recusal is a small price to pay for the honor and integrity of a judicial system we can all trust and have confidence in. The fellow you screw today, could be the fellow who screws your children or grandchildren tomorrow. Kenneth Ellman email:[ke@kennethellman.com](mailto:ke@kennethellman.com) Newton, New Jersey 07860