The Madison St. Clair Record

Benjamin to make first public appearance since Caperton next month in Chicago

7/20/2012 11:52 AM

By Bethany Krajelis

CHICAGO - The West Virginia justice who found himself at the crux of *Caperton v. Massey* after declining to recuse himself from an appeal in the case will speak about judicial independence next month in Chicago.

Brent Benjamin, an associate justice on West Virginia's Supreme Court of Appeals, will serve as a panelist at an Aug. 3 forum at the Westin River North Hotel in Chicago, where he will make his first public appearance since the U.S. Supreme Court handed down its decision in Caperton three years ago.

The forum, "The Changing Landscape of Judicial Independence," will take place during the American Bar Association's (ABA) annual meeting, which is set to run from Aug. 2 through Aug. 7 at several area hotels.

Sponsored by the ABA's Standing Committee on Judicial Independence (SCJI), the forum will feature three other panelists besides Benjamin: Carol Hunstein, the chief justice of Georgia's Supreme Court; Mark Martin, an associate justice on the Supreme Court of North Carolina; and Florida Supreme Court Associate Justice Peggy Quince.

Robert Peck, a law professor and president of the Center for Constitutional Litigation in Washington D.C., will moderate the discussion, which is expected to include the panelists' take on political, corporate and other challenges tied to judicial disqualification in their respective states.

As chair of the SCJI, Maine attorney Peter Bennett said he looks forward to next month's forum and expects Benjamin, as well as the other high profile justices, to draw a large crowd. This year will mark SCJI's second year of hosting a forum on judicial independence.

When asked by a reporter how the ABA got Benjamin on board for the forum, Bennett said, "I think it's because he has a genuine interest in the subject and at some level felt like he was mistreated."

Benjamin landed in the media spotlight and at the center of the ongoing issue over judicial independence after he declined to disqualify himself in an appeal of a $50 million verdict in *Caperton v. Massey*.

In 1998, Hugh Caperton, president of Harman Mining Co., sued A.T. Massey Coal Co. for tortious interference, fraudulent concealment and fraudulent misrepresentation.

A West Virginia trial court found Massey liable and on appeal, Caperton sought Benjamin's recusal. Caperton argued that the justice's recusal was necessary because Massey's CEO, Don Blankenship, had donated $3 million to Benjamin's campaign in the 2004 election for the Supreme Court of Appeals.

Benjamin, however, disagreed. He declined to recuse himself and went on to cast a vote in a 3-2 ruling that reversed the lower court and ordered it to dismiss the case.

The state's high court granted Caperton's request for a rehearing in the case, but again denied his motion for Benjamin's recusal before upholding its previous ruling.

Despite Benjamin's decision to participate in the case, two other now former justices, Spike Maynard and Larry Starcher, disqualified themselves from rehearing the case after it was brought to light that one of those justices had vacationed with Blankenship and the other had previously made public comments critical of the CEO.

In a 5-4 ruling, the U.S. Supreme Court in 2009 determined that due process required Benjamin to recuse himself from the appeal in *Caperton v. Massey*. The majority of the court noted that it didn't need to determine if Benjamin was biased in his decision in order to invalidate the ruling he took part in.

Writing for the majority, Justice Anthony Kennedy said that "Under our precedents there are objective standards that require recusal when 'the probability of actual bias on the part of the judge or decision-maker is too high to be constitutionally tolerable."

In his dissent, Chief Justice John Roberts wrote "that opening the door to recusal claims under the Due Process Clause, for an amorphous 'probability of bias', will itself bring our judicial system into undeserved disrepute, and diminish the confidence of the American people in the fairness and integrity of their courts."

The majority's ruling, Roberts added, "provides no guidance to judges and litigants about when recusal will be constitutionally required. This will inevitably lead to an increase in allegations that judges are biased, however groundless those charges may be."

Following the court's decision in Caperton, a handful of state courts put judicial recusal standards in place and even more faced pressure to do so from outside groups, including the SCJI.

For instance, Georgia and Tennessee imposed a rule that requires a second justice to make the final decision on whether to recuse a justice from a case. Most states currently leave that decision solely to the justice being asked to recuse him or herself.

Although the Caperton case highlighted the need for these standards, the issue of judicial independence has become more prevalent in recent years as more money has made its way into judicial elections.

The SCJI, which is sponsoring next month's forum, submitted a resolution to the ABA House of Delegates last year to urge states to create procedures for judicial disqualification determinations.

Resolution 107, which also suggests disclosure requirements for states that elect their judges, was approved and the SCJI is now working to get states to follow through on its recommendations.

For more information about next month's forum or to see a full schedule of events at the ABA annual meeting, go to www.americanbar.org.