

Kenneth Wyniemko was awarded a minimum of \$3.9 million under a September 2005 agreement settling his lawsuit against Clinton Township, Michigan, for nine years of wrongful imprisonment for a rape he didn't commit.

Federal Judge Slaps Down City's Attempt To Conceal \$3.9 Million Award To Kenneth Wyniemko

By JD Staff



Chronology of Kenneth Wyniemko's saga

April 30, 1994: A man breaks into a 28-year-old Clinton Township woman's home and rapes her repeatedly over four hours while wielding a knife. Before leaving, the assailant steals \$3,000 in cash. The man wore a ski mask and she was blindfolded, so she was unable to identify her attacker.

July 14, 1994: A clean-shaven Wyniemko is arrested and appears in lineup with other men who all have facial hair except for one other man. He is released.

July 15, 1994: Wyniemko is arrested and arraigned on 15 counts of criminal sexual conduct and one count each of breaking and entering and armed robbery.

Oct. 31, 1994: Wyniemko's trial begins. His court-appointed attorney has little more than weekend to prepare his defense.

Nov. 9, 1994: Wyniemko is found guilty. The prosecution's star witness is a jailhouse informant, Glen McCormick, who testifies Wyniemko confessed the rape to him while the two were in the Macomb County Jail. After the trial the informant is spared the life sentence he faced prior to the trial. Although she didn't see her assailant clearly, the victim testified she is certain Wyniemko is her attacker, even though the man wore a ski mask and she was blindfolded.

Dec. 15, 1994: Wyniemko sentenced to 40-60 years imprisonment. The judge exceeds the sentencing guidelines because Wyniemko doesn't show remorse by insisting he is innocent.

May 2000: Wyniemko's father dies.

May 2001: The Innocence Project at Thomas M. Cooley Law School in Lansing accepts Wyniemko's case for review.

Spring 2002: Attorney Gail Pamukov agrees to represent Wyniemko pro bono.

Fall 2002: McCormick recants, saying he was coached to lie in exchange for not being given a life sentence.

June 17, 2003: Wyniemko released after nine years of wrongful imprisonment when DNA tests exclude him as the source of crime scene evidence that included, saliva on a cigarette butt discarded by the assailant, scrapings of the assailant's skin under the victim's fingernails, and the assailant's semen on a nylon used to gag the victim.

"I feel good. I want people to know this man is absolutely innocent." Macomb County Prosecutor Carl Marlinga, the day of Ken Wyniemko's release.

"This is surreal. I still can't believe this is happening." Ken Wyniemko the day of his release.

"There isn't really anything the township can do to change the fact that a man served over eight years in prison for a crime that, according to DNA tests, he didn't commit." Roger Smith, attorney for Clinton Township.

Fall 2003: Wyniemko files federal civil rights lawsuit in U.S. District Court in Detroit, naming Clinton Township and three police officers as defendants. The lawsuit alleges the officers coached jailhouse informant McCormick's testimony that Wyniemko confessed to the rape while they were in jail together. McCormick later recanted.

February 2005: Special prosecutor rules that a former Macomb County assistant prosecutor and a Clinton Township detective didn't commit wrongdoing in procuring McCormick's prosecution favorable testimony during Wyniemko's trial. The former prosecutor is

currently a Macomb County District Court judge, and the detective is still on the job.

March 2005: U.S. District Judge Lawrence Zatkoff denies the defendant's motion to dismiss Wyniemko's lawsuit. Zatkoff rules

there is evidence that police misconduct was instrumental to Wyniemko's conviction, and that he was denied a fair trial.

September 2005: Wyniemko's lawsuit against Clinton Township is tentatively settled. The settlement's terms are not publicly disclosed or reported to the federal court.

Mid-November 2005: Clinton Townships' insurance carrier makes motion to dismiss Wyniemko's lawsuit on the basis a settlement has been agreed to. The attorney for the insurance carrier refuses Judge Zatkoff's request for the settlement's terms on the grounds it is confidential information. Zatkoff orders hearing about the settlement for November 29, 2005.

November 22, 2005: The *Detroit Free Press* files a Freedom of Information Act request for the settlement terms, asserting that the public has the right to know the details because it involves public funds.

November 28, 2005: The *Detroit Free Press* obtains the settlement terms and a copy is provided to Judge Zatkoff, who cancels the hearing scheduled for the next day.

November 29, 2005: The settlement's terms are publicly reported. Wyniemko is to receive a lump sum of \$1.8 million, plus \$6,409 monthly for the rest of his life. The monthly payment will increase 3% per year, and is payable for a minimum of 20 years. If Wyniemko, 54, dies, the payments will be made to his beneficiary. The monthly payments will amount to at least \$2,066,547, so the settlement amounts to a minimum of \$3,866,547.

Sources:

Clinton Township Secret Will Be Out, David Ashenfelter, *Detroit Free Press*, November 18, 2005.
Freed man to get \$3.7 million, David Ashenfelter, *Detroit Free Press*, November 29, 2005.
Freed By Science, He Celebrates, Kim North Shine, *Detroit Free Press*, June 18, 2003.



CA Judge Sacked For Jailing Woman For Non-Existent Crime and Holding Court In Strip Club

By Hans Sherrer

Los Angeles County Superior Court Judge Kevin Ross had been a prosecutor for eight years when he was elected to the Inglewood Municipal Court in 1998.

He was elevated to Superior Court judge in 2000 when the courts unified.

Ross was privately sanctioned for ethical mis-

conduct in February 2001 by California's Commission on Judicial Performance (CJP). The CJP's sanction of Ross involved his "abuse of authority, acting in derogation of the attorney-client relationship and the right against self-incrimination, and conducting proceedings that lacked decorum and were demeaning and humiliating to defendants." ¹

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On November 16, 2005 – almost five years after his “private sanction” – the CJP again acted in response to Judge Ross’ ethical misconduct. However unlike their previous action that was swept under the rug, this time the CJP acted publicly by ordering his removal from office for committing a variety of serious ethical offenses that began months after his 2001 sanction.

The following are among Ross’ ethical violations documented in the CJP’s 72-page opinion:

- In 2001 Ross disclosed confidential information about a juvenile case pending in his courtroom, when he appeared on the KCET-TV public television program, “Life & Times Tonight.”
- During two appearances on “Life & Times Tonight” in 2002, Ross discussed a pending police brutality case involving an Inglewood police officer.
- Ross ordered his bailiff to remove a public defender who demanded a formal hearing for her client, who denied committing three misdemeanor probation violations. After the defendant’s lawyer was removed, Ross sentenced the defendant to 90 days in jail – over the objection of another deputy public defender in the courtroom for a different case.
- Ross started his court late an hour in 2000 with dozens of cases on the docket because he was detained making a radio appearance concerning Proposition 21, which made it easier for prosecutors to charge juveniles as adults.²
- In 2002 Ross was paid \$5,000 to appear in two pilot episodes of a reality television program – Mobile Court – in which small-claims “court” was conducted on location in front of an audience. One of those episodes was filmed inside a Los Angeles strip club decorated with “zebra carpet, neon, mirrors, and a pole front and center.”³ The episode was titled – “Beauty and the Beast” – and it concerned “An “erotic model” using the stage name Angel Cassidy who sued the “Dream Girls” adult club in San Diego, claiming that the club cheated her out of prize money because the security guard (identified on film as “Wolverine”) disqualified her from the final round of the “Miss Wet on the Net” contest.”⁴
- In 2003 Ross unilaterally added a criminal charge against a woman – D. Fuentes – during a hearing for her alleged traffic “infraction” of failing to wear a seat belt. Fuentes only faced a possible fine for the traffic infraction. She claimed she was the victim of mistaken identity, which she substantiated by presenting documenta-

tion to Ross that she was 5’-7”, 180 pounds, and born April 25, 1965, while the ticket was issued to a woman described by the issuing officer as 5’-4”, 250 pounds, and born April 25, 1967. In addition, Fuentes’ signature on her identification didn’t match the signature on the citation. In response to Fuentes’ mistaken identity defense, Ross declared, “I believe you’re lying to me,” and added a misdemeanor count of knowingly providing “false evidence of automobile insurance to a peace officer or court clerk in connection with financial responsibility laws.”⁵ Ross then summarily found her guilty of the new charge and sentenced her to 30 days in jail, even though “she was never arraigned in the sense of being advised either of the charges against her or of her other constitutional rights, including her rights to counsel and to a hearing. Judge Ross did not notify either the prosecutor or the public defender that he had added misdemeanor charges.”⁶ The woman had been jailed for 2-1/2 days when public defenders alerted to her plight were able to convince a different judge to order her release.

- Ross “trampled” on the rights of defendants in at least “four unrelated criminal cases between August 2001 and April 2003, including that he interfered with and abridged the defendants’ constitutional rights to counsel and to fair hearings and against self-incrimination, abused his judicial authority, and became embroiled in two of the pending cases.”⁷
- Ross misled the commission by lying during hearings and in documents related to the ethical charges against him.

In regards to Ross’ television appearances, particularly the pilots for Mobile Court, the CJP found that Ross, “was willing to allow himself to be marketed as a judge in hopes that he then could leave the bench for a more lucrative career in television.”⁸ Sitting judges can only arbitrate disputes within the public court system. Television judges, such as Judge Wapner and Judge Judy, are retired from the bench.

In regards to Ross’ general disregard for the rights of defendants, the CJP found that he “shows a shocking abuse of power and disregard of fundamental rights.”⁹ The CJP described Ross as having “improperly communicated with criminal defendants,” and he “abused his judicial authority, and become embroiled” in those cases.¹⁰

In regards to Ross’ summarily charging Ms. Fuentes with a misdemeanor crime, the CJP found he “usurped the function of the prosecutor to add additional charges.”¹¹ The

CJP further determined that Ross tried to deceive them by falsely claiming he ordered his clerk to release the woman after he found her guilty and ordered her immediate incarceration. They also neither believed his claim that he thought she would have a hearing before a different judge before actually being jailed (she was taken into custody in his courtroom), nor his contradictory claim that he thought she would automatically be released due to overcrowding. Ross’ defense to his courtroom treatment of Ms. Fuentes is he became “frustrated” because she insisted she was the innocent victim of a mistaken identity.

In regards to Ross’ lying during the CJP’s investigation and hearing process, they found that “Judge Ross’ lack of candor is utterly incompatible with the role of judge and impacts on the administration of justice and the public’s image of it. The adverse consequences of Judge Ross’ conduct are undeniable...”¹²

The CJP summarized its findings by writing, “Judge Ross’ manifest and pervasive lack of honesty and accountability throughout these proceedings compel our unanimous conclusion that we must remove him from office. Our mandate to protect the public requires nothing short of that ultimate sanction.”¹³

The CJP’s disciplinary action resulting in Judge Ross’ removal for ethical misconduct was instituted on August 30, 2004, after they learned about his appearance on the KCET-TV “Life & Times Tonight” program in 2001.

Ross is the eighth California judge removed for ethical violation since 1995. He has 90 days to appeal the CJP’s decision to the California Supreme Court. Ross, who makes \$149,160 yearly, is on paid administrative leave pending either the outcome of an appeal, or his resignation.

Sources: L.A. Judge Is Removed From Bench, Jean Guccione, *Los Angeles Times*, November 17, 2005.

Endnotes and additional sources:

1 Decision and Order Removing Judge Kevin A. Ross From Office, November 16, 2005, *Inquiry Concerning Judge Kevin A. Ross*, No. 174, California Commission on Judicial Performance.

2 The CJP cleared Ross of ethical wrongdoing in regards to this charge.

3 Decision and Order Removing Judge Kevin A. Ross, *supra* 4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

