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## **Ethics Complaint Against Judge Serving on FREE's Board Dismissed**

### **Allegations of Judicial Misconduct “Lack Any Factual Foundation”**

**BOZEMAN, Montana** – James Loken, Chief Judge of the Eighth Circuit Court of Appeals, has dismissed a “judicial misconduct” complaint filed by an activist law group against Danny J. Boggs, Chief Judge of the Sixth Circuit Court of Appeals. The complaint, filed by the Washington-based Community Rights Counsel (CRC), alleged that Judge Boggs’ service on the Board of Trustees of the Foundation for Research on Economics and the Environment (FREE) constituted “conduct prejudicial to the effective and expeditious administration of the business of the courts.” Nearly identical complaints were filed against three other judges, but were dropped when the judges resigned from the organization’s Board.

The Foundation for Research on Economics and the Environment (FREE) is a Montana-based nonprofit that provides continuing education seminars for federal judges in collaboration with Montana State University.

Judge Loken, after reviewing two CRC reports attacking FREE, FREE’s web site and literature, a recent audit of FREE’s seminars by two former U.S. Attorneys, and relevant case law and Codes of Judicial Conduct, found that the CRC, rather than Judge Boggs, was “undermining public confidence in the integrity and impartiality of the judiciary.” Additionally, Judge Loken said of the CRC charges, “these allegations typify the character

assassination that is all too common in our Nation's Capital, much of it intended to further the accuser's legislative agenda.”

In his dismissal, Judge Loken carefully responded to the specific complaints made against Judge Boggs by the CRC.

In response to the allegation that FREE and its seminars are biased, Judge Loken wrote that none of the materials CRC provided cast doubt on Judge Boggs' statement that FREE takes no official positions “nor do the materials I have reviewed support the complaint's assertion that FREE seminars are nothing more than a one-sided diatribe against federal environmental laws.”

Judge Loken answered CRC's allegation that FREE is funded by corporations whose interests are served by the seminars by writing that “the complaint ... lacks any factual support for the claims that FREE is overly dependent on any source of funding, that parties to environmental litigation are funding FREE's judicial seminars, or that FREE is the captive of any donor.”

Finally, in reply to CRC's allegation that public criticism of FREE establishes that Judge Boggs is violating Canons 2A and 2B, Judge Loken noted that “the fact that many have criticized privately sponsored judicial education does not make it unethical for a judge to support the concept and to participate in organizations that sponsor bona fide educational programs.”

In his dismissal, Judge Loken also noted that he was the judge chosen to look into CRC's ethics complaint against Chief Judge of the D.C. Circuit Douglas H. Ginsburg, one of the judge's who – until recently – also served on the FREE board of trustees. Judge Ginsburg resigned “reluctantly” from the board after saying he could no longer “constantly be correcting the false impressions and calumnies that appear in the press” (*Washington Post*, May 7, 2005).

Although the judicial misconduct charges were dropped following Judge Ginsburg's resignation, Judge Loken added in his Boggs' ruling that he found “no factual foundation to support an inference of wrongdoing by

anyone, and certainly no evidence of judicial misconduct by any judge of the D.C. Circuit.”

“It seems likely the complaints against the other judges that used to serve on our Board of Trustees also would have been dismissed,” said Dr. John Baden, FREE’s Chairman. “But who can blame them for resigning, when the CRC has been harassing FREE for more than five years simply because we don’t share the same beliefs? Perhaps now everyone will realize the CRC’s attacks lack merit and their motives are suspect at best.”

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