



# Judge quits Fox News defamation case over reports on son's drug arrest

By [Bruce Vielmetti](#) of the Journal Sentinel  
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After months of presiding over a nasty [defamation case between a former local firefighter and Fox News](#), a Milwaukee judge suddenly recused himself last week, citing local Fox coverage of a relative.

Circuit Judge Christopher Foley took the step of putting a written note in the file, explaining why he stepped down without notice to lawyers who had traveled from as far as Chicago for a hearing where they expected rulings to finally move the case along.

Foley explained that a family member has been the subject of recent, negative news media coverage, and he had heard "nominal, passing" complaints about it but still planned to preside — with disclosure — over the case of Aaron Marjala vs. Fox News, one of its stars and others.

But about 10:30 a.m. Thursday, Foley wrote, a family member communicated far greater frustration over, specifically, WITI-TV's coverage.

Foley said he didn't think his impartiality in the Marjala case was compromised, but he decided it was better to step aside.

He said by the time he had researched the ethics and made his decision, he figured it was too late to call off the 1 p.m. hearing.

His note does not identify the relative or further describe the subject of the local news attention, and he declined to discuss it further with a reporter.

"It's just an unfortunate situation in my family," he said.

The coverage at issue involves the judge's son, Christopher R. Foley, 29, who was fired last month as the New Berlin West High School boys basketball coach after he was arrested on a charge of possessing marijuana on school grounds after a game.

[WITI-TV, the Milwaukee Fox affiliate, recently aired](#) follow-up stories that a female co-worker sought a restraining order against the judge's son after he sent her unwanted messages.

That action was dismissed Tuesday when the woman failed to appear in court.

Now the case against Fox News, filed nearly two years ago but still not even to the discovery phase, will stall a little longer as it gets reassigned and as another judge gets up to speed.

Marjala worked as a firefighter with the North Shore Fire Department from 2002 until he was determined to be permanently disabled as a firefighter in January 2008, because of nerve damage in his right arm that persisted despite two surgeries, according to his lawsuit.

In September 2011, WITI-TV highlighted Marjala's continued participation in marathons while on disability.

In that report, Fire Chief Robert Whitaker said Marjala's payment "needs to be exposed" and "the system may need some reform," implying that Marjala's case involved fraud or abuse, according to the lawsuit.

[Fox News, the national cable channel, picked up the story a few days later on "Kelly's Court,"](#) hosted by [Megyn Kelly](#), a lawyer.

She introduced the story by saying Marjala "banged his funny bone on a kitchen counter at a Milwaukee firehouse. Oh the horror."

The story got wide attention on other websites.

Since the case was filed, WITI-TV settled with Marjala separately. Whitaker's lawyers have argued that the settlement knocks him out of the case, too, but Marjala's legal team disputes that.

Foley was on the verge of ruling on that issue.

The Chicago lawyers representing Fox News, Kelly (now the prime-time face of Fox News) and her guest commentator, Lee Armstrong, tried to move the case to federal court, but U.S. District Judge Rudolph Randa bounced it back to state court.

They now have a motion pending to dismiss the case on the grounds that the commentary on the show was all "non-actionable opinion" as evidenced by the heated "mock court debate" format of the show and the "fiery rhetoric and sarcasm that no reasonable viewer" would accept as factual.

An amended complaint in the case points out that Marjala had taken Division of Vocational Rehabilitation training in real estate and was licensed as a home inspector in June 2010.

He started his own home inspection business, and any income he earns is offset against his disability payments, according to the complaint.

Kelly and her panel "consciously disregarded" that information when she said Marjala would draw his full disability pay for the rest of his life, his suit claims.

Late Friday, the case was reassigned to Circuit Judge Jeffrey Conen.

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<http://www.jsonline.com/news/milwaukee/judge-quits-fox-news-defamation-case-over-reports-on-sons-drug-arrest-b99457434z1-295543291.html>

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