



# Korslund to remain on bench for Pangborn trial

## Judge says he will remain impartial

By **CHRIS DUNKER**

DAILY SUN NEWS EDITOR

Gage County District Court Judge Paul Korslund will continue presiding over a case involving a former Beatrice State Developmental Center employee accused of abusing individuals with developmental disabilities in 2011.

Korslund denied a motion for recusal of the judge filed Thursday by Matthew L. Pangborn's attorney Brett McArthur, saying he felt confident he could continue to handle the case impartially.

During his argument, McArthur said only a judge using a "fresh set of eyes" without any previous experience would be able to preside over the matter without bias.

"We feel that if (Pangborn) were convicted of any charges again, somebody who has not already commented or formed an opinion on the matter would be able to fashion an appropriate sentence," McArthur said.

Deputy County Attorney Amanda Spracklen-Hogan said Pangborn, 32, could not prove the judge had shown bias or prejudice in the previous case.

"In order to disqualify a judge, the defendant does bear the burden of showing there is a bias or prejudice,"

Spracklen-Hogan said, citing a 2004 ruling by the Nebraska Supreme Court. That court ruled that if a judge had not shown bias or prejudice in a previous case involving the same parties, the judge was not required to recuse himself.

In July, the Nebraska Supreme Court found Korslund erred in letting the jury use a demonstrative exhibit during its deliberations.

The exhibit, described as a "road map" by prosecutors, showed the alleged victims, witnesses, location and injuries brought forth in each of the counts against Pangborn.

Although McArthur did not object to using the exhibit being used during the trial, he asked Korslund not to allow the exhibit to be used during jury deliberations.

Korslund granted McArthur's motion, but failed to communicate the ruling to the jury who later used the state's road map during its deliberations where it found Pangborn guilty on nine of 10 counts.

The judge, speaking from the bench, said Pangborn's concerns were legitimate.

"I certainly understand

Mr. Pangborn's concern," Korslund said. "There is a right to have an impartial judge both for trial and any sentencing and that's part of the due process rights included in the constitutions of the United States and the state of Nebraska."

Korslund said despite those concerns, he feels he can continue being an impartial presence on the bench.

"I feel very confidently that I can rely only on the evidence at the new trial and what's properly included in the presentence report should there ever be a conviction," Korslund said. "While I understand the basis for the motion, I believe I can be fair and impartial."

McArthur also filed a motion for a change of venue, saying he did not believe Pangborn could receive a fair jury trial in Gage County.

To support his assertion, McArthur entered several newspaper articles that previously appeared in the Beatrice Daily Sun into evidence.

"Given the size of this community and the consistent, fairly descriptive media coverage in the Beatrice newspaper, and given the extensive readership in

that newspaper, I feel there is a real danger to find jurors who have not already formed opinions," McArthur said.

McArthur said the judge also needed to consider post-trial coverage from the previous trial.

"His conviction was reversed based on a legal requirement most laypeople aren't going to understand," McArthur said, saying the general public believes Pangborn had simply "been convicted and sentenced to prison."

"For the average person, that is going to be so difficult to set aside and put out of their mind," he said. "It almost creates a presumption of guilt. It's hard to imagine there being more news coverage for such a small community...it's hard to imagine we can find people who haven't already formed opinions."

Korslund said he plans to rule on the motion within a week.

Pangborn will appear again in court for a Nov. 27 pretrial conference. A Jan. 14, 2014 jury trial has been scheduled.

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– Photo by Lorraine Boyd

## No Conflict Here

Last week was ABA Mediation Week, a perfect time for the conflict resolution presentation held on Creighton University’s campus. Co-sponsored by Creighton’s School of Law, Concord Mediation Center, The Werner Institute and Nebraska Mediation Association, the event also celebrated Conflict Resolution Day, an international celebration held annually on the third Thursday in October. The presentation of “The Self Represented Litigant Phenomenon: What It Means for Mediators, the Legal Profession, the Judiciary and the Justice System” was given by Dr. Julie Macfarlane, professor of law, the University of Windsor. A reception followed the presentation. From the Werner Institute at Creighton are: (above from left) Asst. Prof. Mary Lee Brock, the speaker Dr. Macfarlane, Prof. Bernie Mayer, Asst. Prof. and Online Program Chair Noam Ebner and Associate Prof. Dr. Jacqueline Font-Guzman.