

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

WESLEY C. SMITH
Plaintiff

v.

CHERI SMITH, et als
Defendants

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Case No: 7:07-CV-00117

#13 - INJUNCTION NEEDED TO STOP JUDICIAL HARASSMENT

A pdf copy of this document is available at: <http://www.liamsdad.org/court/civilrights>

"... The law makes a promise. The promise is neutrality. If that promise is broken, the law ceases to exist. **All that's left is the dictate of a tyrant, or a mob.**" ~ Justice Kennedy
Quoted in Dababnah v. West Virginia Bd. Of Medicine, 47 F.Supp.2d 734, 749

Justice consists not in being neutral between right and wrong, but in finding out the right and upholding it, wherever found, against the wrong. - Theodore Roosevelt (1858 - 1919), 1916

1. Judge Sheridan has replaced the Defendant Judges in the state court divorce case and has deprived the Plaintiff of his Right to Due Process and Equal Protection and has also sent him to jail in retaliation for the Plaintiff filing this lawsuit against several state court judges. An injunction is needed to prevent Judge Sheridan, or other state judges, from continuing to harass and jail the Plaintiff for filing his lawsuit and for publicly exposing the misconduct of the Defendants.
2. On June 18th, 2007 Judge Sheridan Judge Sheridan appeared to be looking for a reason to harass and/or imprison Mr. Smith in retaliation for the Mr. Smith filing a Civil Rights Complaint against other judges. Judge Sheridan had the bailiff, officer Crenshaw, threaten Mr. Smith with jail for not having his polo shirt tucked in. Mr. Smith was dressed exactly the same as he had for previous hearing with no complaints from the other judges.
3. According to Officer Crenshaw, Judge Sheridan was not enforcing his 'shirt tucked in

policy' against the women in the courtroom, but only enforcing it against Mr. Smith. Thus Judge Sheridan violated Mr. Smith's 14 Amendment right to Equal Protection. Judge Sheridan did in fact sentence Mr. Smith to 1 day in jail, citing in part his shirt not being tucked in. [see attached order]

4. Judge Sheridan also ordered Officer Crenshaw to prevent Mr. Smith from entering the courtroom to attend his own hearing. Officer Crenshaw did physically prevent Mr. Smith from entering the courtroom at the start of the hearing, causing Mr. Smith to miss the first part of the hearing.

5. This is a clear violation of Due Process as a person has a right to attend, to present evidence, question witnesses, etc. The actions of Judge Sheridan also prevented Mr. Smith from making a complete record of the hearing, which significantly impaired his ability to appeal the ruling. Judge Sheridan refused to rule on the Mr. Smith's motion, to remove attorneys, that was docketed for that hearing.

6. By conducting part of the hearing without allowing Mr. Smith to be present, Judge Sheridan engaged in illegal Ex Parte discussions with the opposing.

7. When Judge Sheridan said he was holding Mr. Smith in contempt, Mr. Smith asked if that was Civil or Criminal Contempt. Judge Sheridan replied in a smart-ass manner that Mr. Smith could think about that in jail. His smart-assed comment and refusal to state the legal grounds for the jail sentence are evidence of a personal bias against Mr. Smith.

8. It appeared to Mr. Smith that Judge Sheridan was trying to send him a message that "you don't sue judges in federal court".

9. Justice requires not only an impartial judge but also one that appears impartial. Judge Sheridan during his career had earned himself a reputation for being biased against and discrimination against fathers. Since Judge Sheridan didn't have the integrity to recuse himself on his own motion Mr. Smith made an oral motion for him to recuse himself. Not only did Judge

Sheridan violate the rules by not complying he became enraged and berated Mr. Smith for presenting a legally appropriate motion.

Canon 3 (E)(1)(a) "A judge shall disqualify himself or herself in a proceeding in which the judges' **impartiality might reasonably be questioned**, including but not limited to instances where: (a) The judge has a **personal bias** or prejudice concerning a party, ...

"Law requires not only impartial tribunal, but that tribunal **appears** to be impartial." 28 U.S.C.A. 455. In Re Tip-PaHands Enterprises, Inc., 27 B.R. 780 (U.S. Bankruptcy Ct.)

"a judge must diligently avoid not only impropriety but a reasonable **appearance** of impropriety as well." Davis v. Commonwealth, 21 Va. App. 587, 591, 466 S.E.2d 741, 743 (1996).

"In exercising such discretion, a judge must not only consider his or her true state of impartiality, but also the public's perception of his or her fairness, so that the public confidence in the integrity of the judicial system is maintained." Buchanan v. Buchanan, 14 Va. App. 53, 55, 415 S.E.2d 237, 238 (1992).

"Judges are presumed to be aware of the provisions of Canon 3" Davis, supra. When a motion to recuse is presented, a "judge must be guided not only by the true state of his impartiality, but also by the public perception of his fairness, in order that public confidence in the integrity of the judiciary may be maintained." Stamper v. Commonwealth, 228 Va. 707, 714, 324 S.E.2d 682, 686 (1985).

10. In keeping with the unprofessional manner in which he was running his kangaroo court, Judge Sheridan wrote 16 lines of handwritten largely illegible chicken scratch on the typed order. Some lines are written horizontally and some vertically. [see attached order]

11. The fact that the chicken scratch is largely illegible is a serious impediment to appealing that portion of the order. Does his handwriting say "I sentenced Mr. Smith to jail to protect my friends and because I'm an ass"? Or do they state any valid reason for the contempt charge? It would take a handwriting expert to reach any definitive conclusion, and the court record shows that Mr. Smith can't afford one.

12. With the easy access to computers and typewriters it is inexcusable for any orders to be handwritten in this day and age. Leaving Mr. Smith with an order where the words in it are subject

to debate impairs and appeal, impairs enforcement, and is a violation of Mr. Smith's right to Due Process.

Illegal Contempt Sentence

13. Judge Sheridan sentence of one day in jail for contempt was not only malicious and personally motivated but also illegal. In order to summarily punish for contempt a judge must comply with VA § 18.2-456 and Judge Sheridan did not do so.

§ 18.2-456. Cases in which courts and judges may punish summarily for contempt. The courts and judges may issue attachments for contempt, and punish them summarily, **only in the cases following:**

(1) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice;...(3) Vile, contemptuous or insulting language addressed to or published of a judge for or in respect of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding;

14. There is no justification in § 18.2-456 for the contempt sentence.

15. Its ludicrous to think that Mr. Smith's shirt not being tucked in obstructed or interrupted the administration of justice, especially since the same polo shirt had not obstructed previous hearings and that the opposing attorney's untucked shirt wasn't obstructing the administration of justice. It appears Judge Sheridan was just looking for a reason to harass Mr. Smith.

16. Mr. Smith made a valid argument about the gender bias of Judge Sheridan and his reputation. Making a good faith argument can hardly be described as "Vile, contemptuous, or insulting language". Mr. Smith simply repeated the same recusal argument he had previously made with other judges who did not indicate being upset or hold him in contempt for making the argument.

17. The argument Mr. Smith made was that in Virginia according to DCSE 96% of custodial parents are female and only 4% are male. This indicates significant gender bias by the judges. In this environment of anti-father bias Judge Sheridan by reputation has considered more anti father

than other judges.

18. Clearly Judge Sheridan had no legal authority per § 18.2-456 to hold Mr. Smith in contempt. Judge Sheridan acted in retaliation for Mr. Smith acting as a whistle-blower exposing the misconduct of the other judges.

19. Mr. Sheridan refused to specify if the contempt was criminal or civil.

The trial judge must clearly articulate the criminal nature of the proceedings at the earliest possible moment. The purpose of this rule is to eliminate the confusion associated with the various types of contempt proceedings. It operates to ensure that the defendants are afforded all their constitutional rights and to inform the defendants what procedural and evidentiary rules will be followed and what standard of proof will be applied to the case. *Powell v. Ward*, 15 Va. App 553 (1993).

20. Judge Sheridan did not provide notice, failed to provide an attorney. Sheridan also did not address the intent of Mr. Smith.

Notice requirements to comply with Due Process mandate that the show cause for contempt specifically set forth the details of his alleged offense. The defendant must have notice prior to the hearing that he is being charged with criminal contempt, and the defendant must be personally served. *Steinberg v. Steinberg*, 21 Va. App. 42 (1995).

Defendants in criminal contempt cases are **entitled to representation** by counsel. Unless waived, **counsel should be appointed for indigent defendants**. Compensation for appointed counsel is set forth in Va. Code § 19.2-163. Counsel may be waived, but make sure the waiver is supported by the record. *Steinberg v. Steinberg*, 21 Va. App. 42 (1995)

Intent is a necessary element in criminal contempt, and no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it. *Carter v. Commonwealth*, 2 Va. App 392 (1986).

21. The record of the case does not support the contempt charge.

The record in such cases **must contain more than the bare conclusion that the defendant's conduct was insolent, insulting, boisterous or the like. The actual facts upon which the court based its final conclusion must be set out . . .** The record must show facts to support proof that the contempt was committed willfully. *Carter v. Commonwealth*, 2 Va. App. 392, 397 (1986).

No Viable State Protection Available

22. The nature of the immediate contempt sentence makes an appeal largely symbolic. If the Appeals Court overturns the ridiculous contempt charge for not having a polo shirt tucked in, that

in no way undoes the jail sentence that was already served, does not make up for the job interview that was missed while in jail, nor does it make up for being strip searched.

23. As a practical matter unless an injunction is granted, Judge Sheridan, or any other judge may hold Mr. Smith in contempt for any reason (or no reason) whatsoever, and send him to jail repeatedly with absolutely no viable legal defense, not even a jury trial, unless a federal court grants Mr. Smith an injunction to protect him from continued abuse by the Virginia Judiciary.

24. It should be noted that Judge Sheridan likely has little fear that the state Judicial Review and Inquiry Commission will punish him for his misconduct as he is retired, and one of the Defendant judges in this case is on the review commission and will likely impede any complaint Mr. Smith files with the commission.

CONCLUSION

An injunction is needed in order to protect Mr. Smith from further incarceration and harassment, and to protect his Right to Due Process. Unless such an injection is granted Mr. Smith will be left in the position of having to choose between attending his own hearings or risk being sent to jail.

Mr. Smith again requests that this court grant him an injunction.

Respectfully Submitted,
Wesley C. Smith
August 20th, 2007

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CERTIFICATE OF SERVICE

I hereby certify that I have e-mailed copies of the foregoing to the following parties/counsel on August 20th 2007: Barry Tatel, James Ingold, Loretta Vardy, and Kevin Barnard. (and paper copy to Loretta Vardy)

Wesley C. Smith

the remaining sealed documents the
county attorney being told to review the
papers argued with a deputy sheriff
about entering the court room with a
gun. Not that he had the deputy had
advised was proper in the circuit and
was allowed to enter in the court room
to decide if he
would enter.

A. Page 4, paragraph 4, Summer Vacation, is amended to provide that the Defendant will have visitation for he summer vacation beginning 1:00 pm on the first (1st) Saturday in July and run until the fourth (4th) Saturday thereafter at 1:00pm. This give the Defendant three (3) weeks summer vacation with Liam.

1. Defendant's Motion in case CL71003 for sanctions against Complainant's Counsel, Loretta Vardy, is denied.
2. Defendant's Motion for jury trial is denied.
3. Defendant's Motion for Judge Richard B. Potter's recusal is denied.

18th day of June 2007

Entered this 20th day of April, 2007.

Paul J. Sheehan

Judge Richard B. Potter ~~to sign~~
Prince William County Circuit Court

Mr. Smith's motion to recuse
this judge is denied. Mr
Smith is held in contempt for
video separate persons but accusations
of judge's dishonesty, were to exclude
him from hearing and a right at the
request to act maturely and signed.
SENTENCE = 1 day in jail - J.S.

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