

FILED

COPY

SEP 16 2009

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

2009-CP-950

**TO: THE COURT OF APPEALS
OF THE STATE OF MISSISSIPPI
RE: CASE# 2009-CP-00950**

**FROM: MARVIN ARTHUR
4158 CASINO CENTER DR.
ROBINSONVILLE MS 38664
PH. 859-221-0552**

SEPTEMBER 16, 2009

MARVIN ARTHUR

CAUSE NO. 2008-0335

VS

**TUNICA COUNTY MISSISSIPPI
AND TUNICA COUNTY SHERIFF'S DEPT.**

APPELLANT'S BRIEF

I'm asking the appeals court to reverse the order that Judge Albert B. Smith Granted on the 20th day of April, 2009 in Tunica County, Ms to dismiss the above mentioned case for all of the following reasons:

(1) Just before the hearing started I was directed to enter the court room. I was in a wheel chair but no assistance was offered to help me inter the room. As soon as I entered the room I found out that I was in the back part of the room. Ever one was already in the room (see exhibit-D) but I had seen no one enter that same door. I was the last one to enter the room. Defendant's attorney Daniel Griffith was standing there at the same door I came through. The room was divided by a partition wall app. 3 ft.tall with a narrow set of doors app. center of the wall. I started to guide my wheelchair towards this set of doors to enter the front half of the room that appeared to be where the proceedings would take place. The part that I was in had some chairs-(no desk of any type)-for the spectators. As I was trying to line my wheelchair up to go through these doors (as they were just wide enough for me to go through) I detected a hateful sounding voice. When I looked up I could see it was Judge Smith. I could not tell what he was saying, but I

could see his arm waving me off. I could also see the hate in his eyes and could detect the hate in his voice. At that time the bailiffs that were

holding the doors open for me slammed them closed. At that time I was beginning to get fearful for my life. With my hearing disability (see

exhibits A&B) and with my still being 30ft from the judge(arrived at by a later visit to the court room by my wife and myself to look the court room over and take measurements) I had no idea what was going on. After I

received a copy of the court reporter's transcript I realized the judge was saying (quote from above mentioned transcript top of page 2) "You don't have to go back up in here. Just leave him right there. Just stay right there. Turn around." This is where I spent the rest of the 5 minutes of the

proceedings. With my hearing disability and the 30ft away that I was

stopped. I was robbed by Judge Smith of my right to communicate with the judge (see exhibit E) which says to the extent reasonably possible, all

parties or their lawyers shall be included in communication with the judge. It was reasonably possible for me to have been brought through the front

handicap door and parked my wheelchair in front of the bench. If this had taken place as it should have, I would have had no problem understanding the judge and being able to communicate with him, but this did not happen even though according to the court transcript I told the judge many times

that I could not understand what he was saying that far away.

Understanding the words said to me is harder to do that to actually hear

something is being said (see exhibit B under (report comments) it will state poor speech scores in both ears) Exhibit -A will explain why I did not have my hearing aid an transmitter the day of the hearing. Without them I'm

limited to 6 to 8 ft. away-not 30ft. which was easily possible should I been allowed to approach the bench. Even if I had my hearing aid and

transmitter the day of the hearing I don't think I could have understood the judge at 30 ft away.

(2) In all of my 70 yrs I have never seen anything like this court

proceeding. To borrow a phrase from (exhibit -F) by Attorney Stan Little it was "bizarre". I have spent a lot of my life in construction which gave me the opportunity to appear in court many times as an expert witness but I've never seen anybody testifying 30 ft away from the bench.

(3) Judge Smith states on page 3 of the court transcript "You're representing yourself, so you're doing that at your own jeopardy". The only reason I'm acting "Pro Se" is I had no choice. Every lawyer I talked to after they seen the offense/incident report made out by Capt. Jon Tyler (see exhibit-C) an employer of the defendant they would not take the case. I know that this report is wrong and incomplete besides illegal (Ms laws section 63-3-417 subsection (1). It won't match the video which was pulled from unit #372, operated by Deputy Kurtus, the officer involved in the accident, that done so much damage to my health.

(4) The Circuit Clerk of Tunica County (Sharon Reynolds) misrepresented the time I had to appeal this case was the reason we were slightly late filling the appeal.

(5) This is a serious case to dismiss without discovery especially since I was robbed of my right of hiring an attorney.

(6) Judge Smith did not give me a change to talk about Rule 41(b) (exhibit-H.) I did not know the hearing was over until I seen Defense Attorney Daniel Griffith leaving-Re: to hearing disability and distance from bench I did not know the case was dismissed until I heard from the Tunica County Circuit Clerk. I also did not know what was said until I received a copy of the court reporter's transcript.

(7) During the hearing I could realize the harness of softness of Judge Smith's voice and I could see his facial expressions and body language. I could also tell who he was talking to by the angel he was looking. When he was talking to it sounded like he was talking to a hardened criminal. When he was talking to Attorney Daniel Griffith it sounded like he was talking to an old friend. They are both from the same town (Cleveland Ms.)

(8) Judge Smith is one of the most hateful people I have seen in my 70 yrs. It is a miscarriage of justice to let a man with his attitude remain on the bench. I'm sending a package practically like this one; only more, to all Federal and State Investigating agencies about Judge Albert Smith and the criminal acts committed by the Tunica County Sheriff's Department. I believe Judge Smith and Attorney Daniel Griffith conspired to prearrange this hearing. One reason I believe that, is when I entered the back door of the court room Daniel Griffith made no move toward the front portion of the

court room. I believe Mr. Griffin knew that Judge Smith was going to stop me that far back. My hearing disability are well known in this area.

(9) In Mr. Griffin's motions he seemed awfully interested in getting this case dismissed before discovery. I believe he knows what is on the video of this accident that the sheriff's dept. has refused to show me for 17 months even though they know this action is causing me more mental stress. My wife was told by Commander Payne (of the Tunic County Sheriff's dept) that a copy of said video had been dubbed and gave to Andy Dulany of Dulany's Law office. Andy Dulany is a County Attorney that works closely with Griffin & Griffin Law Office – The primacy defense attorney's for this case.

(10) After 17 months of pleading to see the video pulled from unit #372 the evening of above mentioned accident, to no avail. I know a lot of what's on that video plus if they knew that there was no a crime on that video they would show it to me. Under these circumstances and my reasonability to the residents of our county, state and country to expose these crimes in hope of keeping the same thing from happening to someone else I have decided to file felony criminal charges against Deputy Glen Kurrus, Capt. Jon Tyler and Sheriff K.C. Hamp in short order. This might end up being the only way I can expose the video and criminal actives of the sheriff's dept. I tried to reach Andy Dulany of Dulany Law office to discuss this matter in hopes I could see the video other wise. He will not return my calls when I leave a message with his secretary.

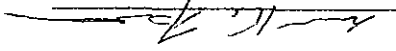
(11) A lot of this appellant's brief is to point out the magnitude of this case.

(12) But the bottom line to this appeal is that I was denied by Judge Smith my rights to communicate with him. This hearing was nothing more than a Kangaroo Court. It was full of harassment and discrimination against me by Judge Smith. This was not a legal hearing and should not be counted as so. For all of the above reasons this judgment should be reversed. This would be the only way justice could be served in this case.

cc: Daniel Griffith

Andy Dulany
Sheriff K.C. Hamp
Board of Supervisors

Thanks for listening


Marvin Arthur, Plaintiff

EX-161-A - APPEND CASE # 2009-CP-00950

DEPARTMENT OF VETERANS AFFAIRS
Denver Acquisition & Logistics Center
P O BOX 25166
Denver CO 80225-0166
www.va.gov/oaam/pmo/dalc
(303) 914-5130

May 5, 2009

Reply: 905D
SSN: A6261
LAB032D

|||||
MARVIN K ARTHUR
4158 CASINO CENTER DR
ROBINSONVILLE MS 38664

Dear MARVIN K ARTHUR:

Enclosed we are returning your earmold(s). The tubing has been replaced as needed.

Your hearing aid(s) PHONAK WIRELESS BICROS OPT 1 Serial No:0417ANCE has been sent to the factory for repair. You may anticipate receiving your repaired hearing aid(s) within 20 to 30 days. If you sent more than one aid for repair, each may be returned separately.

Sincerely,

Justin R. Romero
Inspector

JRR:dec

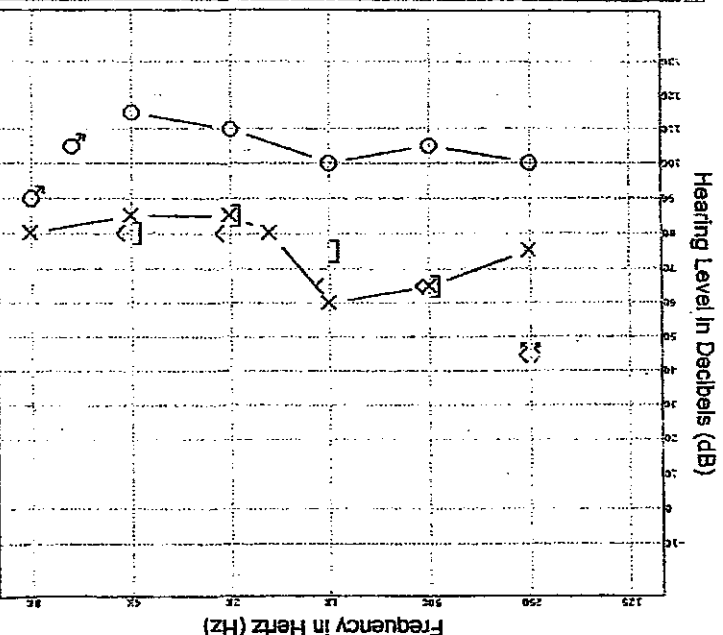
Enclosures

THIS is the taking for my hearing TRANSMITTER being sent back to me. I have a TRANSMITTER for my right ear TRANSMITTER to my hearing aid for the left ear. my hearing quite in early April. I mailed them to Denver CO for repair. If the repair is excessive for repair. Then onto the Factory Denver mail. For the hearing on April 20th, 2009 I had no hearing aid needed in front of the back, not in the back part of the room, which was possible. plenty of room with hard day door closed. I told the judge that I couldn't understand him that far.

Exhibit-B - Appellate case # 2009-CP-00950

Hearing Evaluation Report

Client Name: arthur, marvin
Client #: 0002090
Birthdate:
Date of Evaluation:



Pure Tone Average (3freq.)

105	70
R	L

Speech Audiometry

	SRT	Mask	MCL	UCL
R	105			
L	65			

Word Recognition

	% Stimulus Mask	% Stimulus Noise
R	16	100
L	56	100

Acoustic Reflex

Stimulus Ear	250	500	1000	2000	4000	6000	8000	BBN	LBN	HBN
Contralateral R										
Contralateral L										
Ipsilateral R										
Ipsilateral L										

Impedance Notes

Masker/Model

Calibration Date

Test Reliability

Comments

User Defined 1

User Defined 2

Speech Notes

Masker/Model

Calibration Date

Test Reliability

Comments

User Defined 1

User Defined 2

Pure Tone Notes

Masker/Model

Calibration Date

Test Method

Test Reliability

Comments

User Defined 1

User Defined 2

Tympanometry

Type	Peak Pressure (mmH2O)	Ear Canal Volume (cc)	Static Compliance (cc)	Peak Height (cc)	Gradient (mmH2O)
R	0	6.9	0.3		
L	-165	2.6			

Legend

Symbol	Condition
○	Unaided
△	Masked
□	Unmasked
×	Masked
+	Unmasked

Report Comments

S: See CPRS note for case history information. A: AS-Severe SNHL. AD-Profound SNHL. Poor speech scores in both ears. Type B tympanometry with large volume on right side, consistent with TM perforation. P: Took ear mold impressions in both ears for bicor aids. RTC/HAE

AM. PLCCV

Signature: *Paul E. Smith, E.B.A.*
Date: 9/14/09

THIS TEST WAS TAKEN AT THE "VA" MEDICAL CENTER - 10305 FERGUSON AVENUE MEMPHIS TN 38104-2193

6-13-08
CLASSIFICATION
A/E OF REPORT

COMPLAINANT OR FIRM Kevin Arthur		AGE RACE SEX W/M		2 PHONE (BUSINESS) 662-363-3113		5 PHONE (RESIDENCE) N/A	
COMPLAINANT'S ADDRESS 4 CITY		JOB TITLE (GRADE) Robinsonville, MS 38664		WILL COMPLAINANT PROSECUTE? N/A			
4158 Casino Center Dr		ADDRESS		COMPLAINANT'S BUSINESS OR SCHOOL			
Casino Center Mini Storage		(Owner/Operator)		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>			
OFFENSE/INCIDENT (AS REPORTED)		ADDRESS		9 TYPE PREMISES Roadway			
Injured Person		Casino Center Dr		11 REPORTED BY		12 REPORTED TO	
0 DAY DATE & TIME OF OFFENSE		Friday 6-13-08 @ 2121hrs		Complainant		13 HOW REPORTED By phone	
4 BODY INJURIES		YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		15 TRANSPORTED BY		16 DESC. INJURIES	
18 M/D HOW DONE		Not Transported		17 CONDITION		19 OTHER ACTIONS OR TRADEMARKS	
19 VEHICLE INVOLVED? OWNER		N/A		20 YEAR COLOR MAKE MODEL BODY STYLE LIC. NO. YEAR STATE VIN NO.		21 WHITE Ford Crown Victoria	
22 DISPOSITION OF PROPERTY		S - STOLEN PROPERTY		D - DAMAGED PROPERTY		F - FOUND PROPERTY	

21 CODE		QTY.		DESCRIPTION		SIZE COLOR MODE. STYLE MATERIAL CONDITION		SERIAL NO.		WHERE PURCHASED		VALUE	
24 WITNESSES NAME		1. N/A		BEST CONTACT ADDRESS		AGE		BEST PHONE		OTHER PHONE			
25 NAME AND ADDRESS OF SUSPECT(S) (AGE, RACE, DESCRIPTION, RELATION TO COMPLAINANT OR WITNESS)		2. N/A		BEST CONTACT ADDRESS		AGE		BEST PHONE		OTHER PHONE			
26 DETAILS NOT COVERED ABOVE		2. N/A											

On Friday, June 13, 2008 at 2121hrs, I was dispatched to Casino Center Mini Storage for a complaint. Upon arrival I spoke with Kevin Arthur and Deputy Glen Kurtus, who also arrived on the scene. Mr. Arthur advised that he was walking on Casino Center Drive to get some exercise. He was crossing the eastbound lanes when he was almost struck by a patrol unit, and fell causing injuries to his head. Mr. Arthur advised that he did not see the car coming nor heard a siren. Patford Ambulance Service was contacted to check Mr. Arthur. Mr. Arthur was not transported. Major Harris was notified of this incident. The video was pulled from unit #312, which was being operated by Deputy Kurtus. Deputy Kurtus was responding to a

30 THIS CASE IS
YES ☐ NO ☐ Cleared by arrest ☐ Unfounded ☐ Inactive ☐ Other ☐
31 APPROVED BY
BADGE NO. D-2

29 CASE FILED
17 INVESTIGATING OFFICER(S)
28 REPORT MADE BY Capt. Jon Tyler
DATE 6-13-08
I was transported to the "H" Hospital in Memphis. I arranged my own transportation just after they left. (NEXT PAGE)

PAGE 2 of Exhibit - C

☐ ORIGINAL REPORT
☐ MODIFIES ORIGINAL

☐ SUPPLEMENTAL REPORT
☐ CASE STATUS CHANGE

☐ ADDITIONAL VICTIMS
☐ ADDITIONAL OFFENDERS

☐ ADDITIONAL STOLEN PROPERTY
☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 of 2 PAGE

burglar alarm at the Casino Factory Shoppes on Highway 61 at the time of the incident.

Video footage was received and shows Mr. Arthur crossing the roadway in front of Deputy Kurrus. Deputy Kurrus had little time to react. Deputy Kurrus was not driving at a high rate of speed.

NARRATIVE

MS LAWS SECTION 63-3-417, SUBSECTION (1) STATES THAT ALL REQUIRED REPORTS AND SUPPLEMENTAL REPORTS SHALL BE WITHOUT PREJUDICE TO THE INDIVIDUAL SO REPORTING. THIS REPORT DOES NOT MEET THOSE REQUIREMENTS. CAPT. JON TYLER SHOULD HAVE CALLED IN THE MS HIGHWAY protocol TO INVESTIGATE THE ACCIDENT. BY JON TYLER BEING DEPUTY KURRUS'S SUPERIOR THIS REPORT IS NOT LEGAL. TO THE BEST OF MY KNOWLEDGE SOME 17 PLUS MONTHS LATER THERE IS NO OFFICIAL REPORT BE FILLED ON THIS ACCIDENT. THIS REPORT MAKES NO MENTION OF DEPUTY KURRUS LEAVING THE SCENE OF THE ACCIDENT AND NOT STOPPING. THIS REPORT INDICATES A CRIME COMMITTED BY CAPT. JON TYLER IN SO MUCH AS TAMPERING WITH EVIDENCE BY FILLING OUT A BIAS, FALSE, AND INCOMPLETE REPORT AND BY NOT FILLING ANY REPORT FOR 54 DAYS LATER AFTER BEING FORCED TO POINT TO A COVER UP.

m K. Afe

ADMINISTRATIVE

SUBJECT IDENTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED <input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> ACTIVE <input type="checkbox"/> UNCLOSED <input type="checkbox"/> DISCLOSED		<input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> ARRESTED 18 AND OVER		<input type="checkbox"/> EX-CLEAR UNDER 18 <input type="checkbox"/> EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENSE DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION COMED 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION 5. <input type="checkbox"/> JUVENILE - NO CUST									
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER		
Capt. Jon Tyler		6-13-08		Caleb Doe		8-6-08	D-		
				FOLLOW-UP INVESTIGATION <input type="checkbox"/> YES <input type="checkbox"/> NO					

RE: SECTION 63-3-411 → 54 days between these two dates.
 second paragraph - 6 days

EXHIBIT-D - APPEAL case # 2009-CP-00950

Sharon Granberry Reynolds

CLERK OF THE CIRCUIT COURT

TUNICA COUNTY

P.O. BOX 184

TUNICA, MISSISSIPPI 38676

FAX: 662-363-2413

662-363-2842

CIRCUIT COURT
HON. ALBERT B. SMITH
P.O. Drawer 478
Cleveland, MS 38732
662-843-3346
FAX: 662-846-2930

CIRCUIT COURT
HON. CHARLES E. WEBSTER
P.O. Drawer 998
Clarksdale, MS 38614
662-624-3017
FAX: 662-824-2913

Albert B. Smith - Judge
Robin Monroe - Court Reporter
Sharon G. Reynolds - Circuit Clerk
Cynthia Bullock - Deputy Circuit Clerk
Leonard Dorson - Bailiff
Louis Harris - Bailiff
Daniel Griffith - Attorney
Darryl Bridges - Deputy Sheriff

↓ This list is the names of

the people that were in the court

Room on April 20th 2009 at 12:55 PM
Hearing on Motion to Dismiss

~~WCA~~

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law

The prohibition against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. Whenever present (C) it is the party's lawyer, or if the party is impleaded by Section 8B(7) of the party or notice to a party is required by Section 8B(7) of the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must disassociate ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge. A judge must not independently investigate facts in a case and must consider only the evidence presented. A judge may request a party to submit proposed findings

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 8B(7) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(9) A Judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impede the fair trial or trial by jury. A Judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impede the fair trial or trial by jury.

of impending in any court, make any public statement that might reasonably be expected to affect its out-

Downloaded At: 11:52 11 September 2009

CODE OF JUDICIAL CONDUCT

Canon 3

to do so. A judge shall refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and shall require the same standard of conduct of others subject to the judge's direction and control.

Commentary

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to all who are legally interested in a proceeding, or their lawyers, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, except for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(a) where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) Judges may obtain the advice of a disinterested expert on the law applicable to a proceeding before them if the judges give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidious discrimination, the judge is required to resign immediately from the organization.

CANON 3
A Judge Should Perform the Duties of His Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of judges take precedence over all their other activities. The judges' judicial duties include all the duties of their office prescribed by law. In the performance of these duties, the following standards apply:

(1) A judge shall hear and decide all assigned matters within the judge's jurisdiction except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacities, and shall require similar conduct of lawyers, and of their staffs, court officials, and others subject to their direction and control.

Commentary

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control

EX-161-T-F - Appeal case # 2009-CP-00950

Prosecutor files appeal of contempt citation

Peter Thomas

Local defense attorney Stan Little and Tunica County prosecuting attorney Chuck Graves are adversaries in the courtroom, but both men found themselves on the wrong side of Judge Albert Smith in Tunica County Circuit Court on Thursday, March 12, 2009.

The two local attorneys were cited for contempt after problems arose involving several DUI convictions that had been appealed from Tunica Justice Court to the Circuit Court. When Judge Smith's gavel fell, Little and Graves were each fined \$100. Graves was also ordered to spend 48 hours in jail but was released later that same day, after Judge Smith modified his original order reducing the sentence to "time served."

According to documents provided by Smith's office, the charges against the two attorneys stemmed from what Smith saw as their lack of action in following his previous order, made last November.

Smith ordered the pair to comply with the Rules of Discovery in providing and securing videotape evidence on the first of three particular DUI cases presented in court last week. Claiming their continuing difficulty in securing the videotape evidence of the traffic stops in that case and two others, the two attorneys agreed to ask for dismissals in the cases. Smith saw otherwise.

In Smith's previous ruling, dated November 4, 2008, he had ordered the State to "comply immediately with the rules of discovery" and also ordered that the State and the defense attorney "be prepared and ready for trial upon the next court setting."

When both parties appeared in court last week and attempted to request a dismissal, Smith issued the contempt orders and jail time.

"This court cannot properly clear the docket when its orders are not followed nor when the practicing attorneys fail to follow the rules," Smith stated in the Order of Contempt filed March 12, 2009.

Graves chose not to comment on the incident and has filed an appeal. Little, who stated he plans to file an appeal as well, described the incident as "bizarre."

"I believe that Mr. Graves and I followed the law to the letter in defending our respective clients' positions and I have never in my years of practice seen anything like what occurred in Tunica County Circuit Court last Thursday," Little said.

According to representatives from Smith's office, two of the cases have been re-set to a later date. The third case's appeal was dismissed and was remanded back to Justice Court.

Stan Little - local defense att.
Chuck Graves - prosecutor

IN THE CIRCUIT COURT OF TUNICA COUNTY, MISSISSIPPI

MARVIN ARTHUR,

Plaintiff,

CAUSE NO. 2008-0335

versus

TUNICA COUNTY, MISSISSIPPI,
AND THE TUNICA COUNTY
SHERIFF'S DEPARTMENT,

Defendants.

HEARING - MOTION TO DISMISS

On the 20th day of April, 2009, the

plaintiff, Marvin Arthur, appeared in open court

pro se, with Danny Griffith, counsel for defendants,

also present. The following proceedings transpired

before the Honorable Albert B. Smith, III, reported by

Rabin' Monroe, RMR, CRK, CCP, Official Court Reporter,

CSR #1811, commencing at approximately 12:55 p.m.:

THE COURT: Okay. This is 2008-335,

Arthur v. Tunica County.

MR. GRIFFITH: And Your Honor, I don't

necessarily know who the plaintiff is.

THE COURT: Mr. Marvin Arthur?

MR. ARTHUR: Yes, sir.

MR. GRIFFITH: Your Honor, we may need

some assistance. I believe this is

Mr. Arthur.
 THE COURT: Okay. All right.
 That's all right. You don't have to go
 back up in here. Just leave him right there → 30 ft. from
 just stay right there. Turn around.
 You can hear me, can't you?
 THE BAILIFF: Can you hear him? Can you
 hear the judge?
 MR. ARTHUR: Not real good.
 THE COURT: Well, you're not gonna hear
 it all, then, because this is about as good
 as we go. Pay attention, Arthur. Just stay
 right there and listen as best as you can.
 You got a motion to dismiss. You
 represent Tunica County.
 MR. GRIFFITH: Yes, sir.
 THE COURT: Give me a understanding of
 what your motion is about.
 MR. GRIFFITH: Mr. Arthur was some type
 of pedestrian. He had a near miss and jumped
 out of the way, apparently, of a police car.
 He's suing for personal injuries. He didn't
 file a notice of claim pursuant to
 Mississippi Tort Claims Act.
 In response to our motion, Mr. Arthur
 claims he would rather have a venue change.
 Of course the notice-of-claim requirement is
 jurisdictional, and the court would have to
 have jurisdiction to change venue. So it's

THIS IS NOT TRUE -
 NOT 30 FT. FROM JUDGE

30 ft. from
 bench
 H.K.H.

29 didn't understand a word you said. I gotta

28 MR. ARTHUR: I'm sorry, sir, but I

27 was not done.

26 notice of claim before you can proceed. That

25 setting, anyway -- you've got to file your

24 even know if that's applicable in a civil

23 even address a change of venue -- and I don't

22 Counsel opposite's right. Before I could

21 You never did file a notice of claim.

20 But you still got to follow the law.

19 Cochran Law Firm letter here.

18 own jeopardy. And I notice that you've got a

17 THE COURT: So you're doing that at your

16 MR. ARTHUR: I can't hear him.

15 yourself.

14 don't have a lawyer. You're representing

13 You've got -- I say you've got -- you

12 up here, anyway. From 301 to 304, it doesn't
make a difference -- or not

11 THE COURT: Well, you'd have a hard time

10 time hearing you that far.

9 MR. ARTHUR: I have a little bit hard

8 did notice in your plea --

7 I don't know if you have a lawyer or not. I

6 THE COURT: Mr. Arthur, that is correct.

5 suin' the county.

4 to serve a notice of claim before you can go

3 But the law's solid as can be. He's got

2 it's a jurisdictional dismissal.

1 just a dismissal without prejudice, because

I had no choice with the
defendant making the police
Report. Not true, bias, and elegant

I don't understand a Judge
not knowing that distance
does have an effect on sound

be closer than this. But I have -- I do have

a defense for it, and I want to be heard.

THE COURT: You got a what? *HARASSMENT - plain & simple*

MR. ARTHUR: I don't hear you -- I can't

hear you that far away.

THE COURT: Well, there's really nothin'

you can say. There's no nothin' that you can

do to help yourself.?

You've got a 12(b)(6) motion; is that

correct?

MR. GRIFFITH: Yes, Your Honor. And

like I said, as an officer of the court, it

is my duty to tell the law right, and it's

dismissal without prejudice, 'cause it's

jurisdictional. He can do a notice and file

at a later date, but he still has to jump

through the right procedural requirement.

But all I'm here today for is a 12(b)(6)

dismissal without prejudice.

MR. ARTHUR: I'd like to be able to

explain my case.

THE COURT: Go ahead and explain it.

MR. ARTHUR: Okay. I'll try to talk to

you. I can't hear you.

My first defense is on the harmless

errors. I got -- I got a defense

there. Harmless errors. Should give me a --

a defense on that.

And my main defense is we're sittin' in

the county. I want to change the venue

first. We're sittin' in the County's house.

County's employees. County owns the

building. Got all people around us, they

know most everybody. It's impossible for me

to get a jury that don't know somebody in the

County. I believe change of venue is a must

before we can make any decisions.

THE COURT: Well, I'm gonna grant his

motion to dismiss. You need to go to a

lawyer.

Do me an order, Mr. Griffith.

You got to file the right papers. You

never gave a notice. That was in the

pleading. If you don't hear what I'm sayin'

or act like you don't... that way

Mr. Griffith's pleading.

This is 12(b)(6). I'm gonna give a

motion on the pleadings. If you'd send a

copy of that order.

Do you have an order with you?

MR. GRIFFITH: I do not. I'll put one

in the mail, copying the Court and Counsel.

And with that done, Your Honor, may I be

excused?

THE COURT: This court's in -- in

recess.

(Proceedings were concluded at

1:00 p.m.) → Only 5 minutes for a life time of pain & suffering.

check exhibit - page 3 - canon 3 (5) in commentary
this is a bias phrase
check exhibit A & B (hearing information)
The Judge stepped over the line for sure
on this one. By me being a 70 yr old man
hearing impaired & a victim of a hit & run
deputy sheriff that put me in a wheel chair.

(disability & age) → discrimination

COURT REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI
COUNTY OF TUNICA

I, RABIN' MONROE, RMR, CRR, CCP, CSR #1811,

Official Court Reporter for the Eleventh Circuit Court
District of the State of Mississippi, do hereby certify
that the foregoing Motion Hearing, Cause No. 2008-0335,
was taken before me; that the proceedings were taken
down by me in machine shorthand and thereafter

transcribed by computer-aided transcription under my
supervision and direction; that the foregoing pages,
numbered from 1 to 5, inclusive, constitute a true and
accurate transcript of all the proceedings had upon the
taking of said Motion Hearing, all done to the best of
my skill and ability.

DATED in Cleveland, Mississippi, this 9th day
of June, 2009.

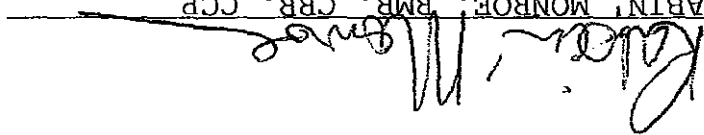

RABIN' MONROE, RMR, CRR, CCP
Official Court Reporter
CSR #1811

EXHIBIT-H - Appeal case # 2009-CP-00950

compulsory, the court has jurisdiction to decide it even though the plaintiff claim is dismissed; if the counter-claim is permissive, it will ordinarily require independent grounds for jurisdiction and these independent grounds permit it to remain pending. Thus, the rule applies only when there is a permissive counter-claim that can be maintained without an independent ground of jurisdiction, as when it is a setoff, or in other unusual circumstances in which the counter-claim would fall if the plaintiff's claim were dismissed.

Rule 41(b) allows the court to dismiss an action involuntarily for three different causes: dismissal at the close of the plaintiff's evidence for failure to show a right to relief, which operates as a decision on the merits, dismissal for want of prosecution, which is a penalty for dilatoriness, See Miss. Code Ann. § 11-53-25 (1972) (dismissal for want of prosecution); and dismissal for failure to comply with "these rules" or any order of the court, see *Sherwin Williams Co. v. Feld Bros. & Co.*, 139 Miss. 21, 28, 103 So. 795, 796 (1925) (plaintiff may be nonsuited by the court for failure to comply with order to make declaration more specific). Unless otherwise specifically ordered by the court, an involuntary dismissal under Rule 41(b) ordinarily operates as an adjudication upon the merits and is with prejudice. See 9 Wright & Miller, Federal Practice and Procedure, Civil § 2369-2373 (1971). However, past Mississippi practice has tempered this harsh result by allowing dismissed cases to be reinstated, except in extreme situations. See, e.g., *Ross v. Milner*, 194 Miss. 497, 505-06, 12 So.2d 917, 918 (1943) (where order did not recite that cause was dismissed without prejudice, it was considered as being dismissed with prejudice); *Peoples Bank v. D'Loy Royalties, Inc.*, 206 So.2d 836, 837 (Miss. 1968) (dismissal is a drastic punishment which should not be invoked except where conduct of parties has been so deliberately careless as to call for such action).

Rule 41(c) provides that the other subdivisions of Rule 41, stating the procedures for and consequences of dismissals, apply to the dismissal of a counter-claim, cross-claim, or third-party claim.

One exception is allowed for Rule 41(c) matters because the right of voluntary dismissal with notice, MRCp 41(a)(1), is terminated by an answer. This will not work for counter-claims, cross-claims, or third-party claims, since defendant will ordinarily assert these with or subsequent to his answer. Accordingly, Rule 41(c) provides that a voluntary dismissal by a defendant, or other claimant, of a counter-claim, cross-claim, or third-party claim must be made before a responsive pleading is served or, if none, before the introduction of evidence at the trial. MRCp 41(a)(1) also provides that the service of a motion for summary judgment also terminates the right to dismiss by notice. As a matter of logic and judicial consistency, if a motion for summary judgment defeats plaintiff's right to dismiss, then it should also defeat the right of a defendant to

CERTIFICATE OF SERVICE

I, Marvin Arthur, Pro Se, hereby certify that I have this day mailed, postage prepaid, true and correct copy of the above appellant's brief for appeals court case no. 2009-cp-00950 to the following party.

Judge Albert B. Smith
P.O. Drawer 478
Cleveland, Ms 38732

DATED this the 24th of September, 2009


Marvin Arthur, Pro Se
Plaintiff