

## IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS

5<sup>TH</sup> DIVISION

STATE OF AKANSAS

V. 23CR-12-892

JEFF JOHNSTON

FINDINGS OF THE COURT

Today the State of Arkansas and Jeff Johnston appear for a scheduled Pre-Trial hearing. Counsel for the Defendant has filed a Motion to Quash and a Motion to Dismiss the current charges against Jeff Johnston. This Motion raises two separate issues: 1) this Court's authority to issue an arrest warrant and 2) this Court's jurisdiction to hear the matter.

## 1.) Authority to issue an arrest warrant.

The Arkansas Constitution specifically provides that all Circuit Judges are general jurisdiction judges. The Arkansas Supreme Court has specifically held "the creations of divisions shall in no way limit the powers and duties of the judges to hear all matters within the jurisdiction of the Circuit Court." In addition, the Arkansas Rules of Criminal Procedure 13.1 prescribes that all judicial officers (which are defined as District and Circuit Judges) may issue an arrest warrant. Further, A.C.A. 16-81-104 states that "a warrant of arrest may be issued by any circuit judge."

I therefore find that the portion of Defense Counsel's Motion to Quash the warrant is frivolous and without a scintilla of merit. Arkansas Rule 11 requires sanctions when any attorney files an improper pleading that 1) the attorney failed to properly research the law, 2) the argument is not warranted by existing law... 3) The attorney did not file the pleading for an improper purpose, including the purpose to harass or unnecessarily delay justice.

Rule 11 sanctions while mandatory upon a finding by the Court, should not be given lightly. What furthers supports sanctions is that fact the Counsel for the Defense spent years a prosecutor. During this time, he presented this Court arrest warrants. In addition, Counsel appeared in criminal matters he prosecuted before this court. Thus, it is inexcusable for Defense Counsel to contend he did not know the well-established law.

Furthermore, this Court is greatly disappointed that this pleading comes following Defense Counsel looking the Judge in eye before the last hearing and stating he would not contest these issues and stated "a circuit judge is a circuit judge and I won't go there."

The Court finds no other option than to impose Rule 11 Sanctions against Mr. Winningham. The Court Orders that Mr. Winningham shall return to his client- or not charge his client for any fees

associated with preparing or defending the frivolous argument. In addition, the purpose of Rule 11 sanctions is to deter future conduct, thus the Court imposes a \$5,000 fine on Mr. Winningham payable to the County's Victim Assistance Fund by Dec. 1, 2012. The Court will allow Mr. Winningham 21 days to withdraw his pleading to void the sanctions and should Mr. Winningham desire to be heard on the issue of sanctions the Court will give him the opportunity at the next pre-trial hearing on Nov. 30<sup>th</sup>, 2012.

Mr. Winningham is charged with defending his client, but not at the expense of the pursuit of justice.

2) The Court's authority and subject matter jurisdiction.

Counsel for the Defendant's Motion to Quash challenges this Court's subject matter jurisdiction. Once again, this Court is left with questioning the motive of this pleading. As the Court stated previously, the Arkansas Constitution gives all Circuit Judges general jurisdiction. The Supreme Court, as stated herein, also recognizes this fact. Supreme Court Administrative Order 14 directs the circuit judges to set up divisions, but also states "the creation of divisions shall in no way limit the powers and duties of the judges to hear all matters within the jurisdiction of the circuit court."

Defense Counsel's Motion challenges the Arkansas Constitution and claims that the 20<sup>th</sup> Judicial District Administrative Plan somehow trumps the Arkansas Constitution as well as Supreme Court Administrative Order 14. Such a challenge requires that Defense Counsel serve a copy of said Motion and brief on the Attorney General and allow him an opportunity to respond and intervene in the case. Defense Counsel failed to follow Arkansas law in this matter. Defense Counsel also violated this Court's Pre-trial order as the Motion and Brief were not timely filed and for that reason alone, the Court could dismiss the Motion. This Court, however, will give Defense Counsel time to correct his pleading and serve the Attorney General.

Therefore, this Court reserves ruling on the Defendant's Motion to Quash and Dismiss in its entirety.

In closing, there have been allegations that Judge Clawson somehow improperly referred this case to this Division. This Court believes Judge Clawson acted appropriately in determining the Court with no conflict. Although Judge Reynolds and this Court are both leaving at the end of the year, there have already been discussions about Budgets, office space, and court space for the new District Judges (which includes Judge Reynolds). Thus, Judge Clawson made a difficult but appropriate decision. It's never easy to recuse from a case and it's never easy to sign an arrest warrant. However, judges are elected and take an oath to perform their duties. I took an oath to perform the duties of a Circuit Judge. Thus, if I am presented with an arrest warrant supported by law- it is my duty to sign it. I have signed arrest warrants for criminal division cases for six years and it's never taken lightly.

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Rhonda Wood, Circuit Judge