

Carole R Squire
09/29/2003 04:10 PM

To: Jim Mason/Juvenile Domestic Relations/Common Pleas
Court@Common Pleas Court
cc:
Subject: Judge Mason's email dated Sept. 24, 2003 to
Carole Squire, in re: motion for removal of counsel

I agree that Rule 41 of the Rules of Superintendence for the Courts of Ohio permits a party to petition the administrative judge for removal of counsel under certain circumstances. However, I disagree with your conclusion that "it was appropriate" [to have your bailiff set on your docket the at issue Motion for Removal of Counsel], without first speaking to either me or a member of my staff. As a threshold matter, prior to an attorney deciding to utilize the remedy of having an administrative judge consider a motion for removal of counsel, the attorney should exhaust opportunities to have the trial judge handle the matter. "[i]t is well-settled that a trial court has the inherent power to control its own docket and the progress of proceedings in its court." *Pavarini v. City of Macedonia* (9th App. Dist. 2001), 2001 Ohio App. LEXIS 1772, *8.

Regarding the instant motion, Magistrate [redacted] has presided over Plaintiff's January 23, 2003, filed contempt motion, since its inception. The Court recalls no time during the pendency of Plaintiff's motion when Plaintiff's attorney, [redacted], approached the trial court with any objections or concerns in regard to the number of continuances granted by Magistrate [redacted]. Further, the record reflects Mr. [redacted] agreed to two of the four total continuances granted by the Magistrate in this matter, on April 14 and July 1, 2003, and signed the remaining two continuances granted on June 5 and August 6, 2003, over objection. Moreover, on each of the days the Magistrate granted a continuance, over objection, I was available in my courtroom to address any such issues.

Rule 41 of the Rules of Superintendence provides that "[a]ll motions shall be ruled upon within one hundred twenty days from the date the motion was filed, except as otherwise noted on the report forms." However, in the [redacted] matter, [redacted] agreed to 64 of the 163 total days that the hearing on Plaintiff's contempt motion has been continued. I certainly appreciate that, as stated in the subject email, "[you] [are] not interested in hearing any matter that is assigned to [me]." However, by allowing matters such as the instant motion to be placed on your docket, you encourage attorneys to circumvent the assigned trial judge, in instances where they have failed to exhaust available means before the trial judge. To do so prematurely, interferes with the inherent right of the trial judge to manage his or her own docket.

Finally, the conclusion in your September 24, 2003, email that Plaintiff's Motion for Removal of Counsel "is a rare and unusual one, and the first of its kind [you] have seen in the five years [you] have been here," is likely due to the fact that, in a situation such as this, removal of counsel by the administrative judge is likely unprecedented in this Court and should most definitely be a remedy of last resort. In recognition of the trial court's inherent power to manage its own cases, a conscientious attorney does not seek this remedy until such time as the attorney has apprised the trial court of any problematic issues and afforded the trial court an opportunity to address them. Mr. [redacted] failed to undertake such measures, and thus, his Motion for Removal of Counsel, seeking relief before the Administrative Judge of this Court, pursuant to Superintendence Rule 41, should be dismissed as prematurely filed and the matter referred to the assigned Judge.

Thank you for your attention to this matter.