

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

In the Matter of Petit Jury Service)
of MICHAEL J. HOELSCHER,)
)
Respondent.)
_____)

Case No. 15-mc-00111-EFM

ORDER

Because of the high value this Court places on jury service, and the great respect and appreciation I have for those citizens who respond to a summons for jury duty, it has been my practice to order before me those individuals who are summoned for jury duty but who do not respond. Typically, the Court requires such “no-show” potential jurors to perform a few hours of community service. When the Court convened a jury trial on June 15 of this year, and a few citizens summoned for jury duty did not appear, I followed my customary practice and issued each of them an Order to Show Cause to appear and show good cause for their failure to appear for jury service. One such “no-show” so ordered was Respondent Michael L. Hoelscher.

In response to the Order to Show Cause, Mr. Hoelscher contacted the Court’s jury clerk to discuss his actions and his reasons for non-appearance. Such contact is not unusual. What happened next, however, was most unusual; indeed, in this Court’s experience, it is unprecedented. My staff received an irate phone call from an attorney, Stephen Joseph, indicating that he had been retained by Respondent in regards to the Show Cause Order, informing my staff that Respondent was a state court judge (of which fact we were aware), and that as such Respondent was not required to respond to the jury summons. A Motion to Vacate Order to Show Cause was soon thereafter filed with the Court. The motion asserts that as a state court judge, Respondent was exempt from jury service. This motion was quickly followed up

with an e-mail to the Chief Judge of this court threatening to subpoena numerous officials of this court to demonstrate their "ignorance of the law" and warning that "when I go to court, I go to win."

Frankly, the Court found these developments astonishing. Because I expect jurors who are summoned to hear and decide a case to actually appear, when I was summoned to jury service in state court in Sedgwick County (the very court in which Respondent now sits as a judge), I responded and spent the better part of the day in the jury assembly room. Indeed, I am aware that all three Presidentially appointed judges in this courthouse have responded to a jury summons; two in Respondent's court and one in the state court of another county where that judge was then residing. One of my Article III colleagues was actually selected to serve on a jury in Sedgwick County District Court, the Court in which Respondent now sits as a judge. We, as well as at least one Magistrate Judge in this Court who also responded to a similar jury summons, would never have expected to be exempted from this duty of citizenship that we expect others to honor. Respondent's lengthy motion, however, insists that he be exempted.

It should be noted that Respondent did not contact the Court in advance and seek to be excused from responding to the jury summons on account of his claimed exemption. I would also note that, at the jury selection which Respondent failed to appear, an emergency room doctor appeared and, at an appropriate point in the proceeding, requested to be excused because the emergency room was short-staffed and his absence would create a hardship for patients reporting with emergency medical conditions. I granted his request and excused him.

Respondent cites law that exempts from jury service members of the armed forces, fire and police department officials, and public officers in the three branches of government, federal and state. I must note that when I responded to jury summons in state court, I spent the morning

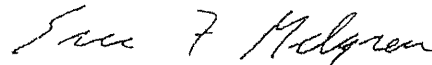
sitting in the jury assembly room by Jeff Easter, who is now the elected Sheriff of Sedgwick County and was then a Captain in the Wichita Police Department. He (like me) would have been exempt under this law, but like me and like my colleagues considered it his duty as a citizen to respond. Frankly, I would have suspected that to be the position of most judges and law enforcement officials summoned for jury service.

When Respondent's attorney called my staff, indignant about the Order, he told her that they would just show up at the hearing and "have some fun," presumably by demonstrating Respondent's legal exemption. Loathe though I am to interfere with anyone's plan for fun, if Respondent Judge Hoelshcer wants to insist upon being exempt from jury duty, then I will honor the exemption the law provides to him, and grant his Motion to Vacate. I do so sadly, believing that judges (and other public officials) should to the fullest extent possible comply with the laws with which we expect others to comply; but I do so with the confidence that most of us do.

IT IS THEREFORE ORDERED that Respondent's Motion to Vacate Order to Show Cause (Doc. 3) is hereby GRANTED.

IT IS SO ORDERED.

Dated this 26th day of June, 2015.



ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE