

STATE OF INDIANA ) IN THE MARION COUNTY SUPERIOR COURT  
 ) SS: CIVIL DIVISION, ROOM NO.:  
 COUNTY OF MARION ) CAUSE NUMBER:

STATE OF INDIANA ex. rel. Paula )  
 E. Lopossa, as Judge of the )  
 Center Township Small Claims )  
 Court of Marion County and )

49 D0506 12 PL 507 38

PAULA E. LOPOSSA, as Judge of the )  
 of the Center Township Small )  
 Claims Court of Marion County )

Plaintiffs,

vs.

CARL L. DRUMMER, as Trustee )  
 of Center Township, Marion )  
 County, Indiana, and )

TOWNSHIP BOARD OF CENTER )  
 TOWNSHIP, MARION COUNTY )  
 INDIANA, )

Defendants.

**FILED**

DEC 18 2006

121

*Donna Ann Holler*  
CLERK OF THE  
MARION CIRCUIT COURT

**VERIFIED COMPLAINT FOR MANDATE,  
 FOR INJUNCTION, AND FOR DECLARATORY JUDGMENT**

Come now the State of Indiana on the relation of Paula E. Lopossa, as Judge of the Center Township Small Claims Court of Marion County, and Paula E. Lopossa as Judge of the Center Township Small Claims Court of Marion County, by counsel, Norman Reed and for her complaint for mandate, complaint of injunction and for declaratory judgment would state as follows:

**PARTIES**

1. At all times relevant herein, the Relator and Plaintiff, Paula E. Lopossa, is the

duly elected and qualified Judge of the Center Township of Marion County Small Claims Court (which Plaintiff is hereinafter "Judge" and which said Court is hereinafter "Court").

2. At all times relevant herein the Defendant, Carl L. Drummer, is the duly elected and qualified Trustee of Center Township, Marion County, Indiana (hereinafter "Trustee").
3. At all times relevant herein Center Township, Marion County, Indiana, is a political subdivision of the City of Indianapolis under IC 36-6.
4. At all times relevant herein the Township Board of Center Township, Marion County, Indiana, (hereafter "Board") is a township board created under IC 36-6-6.

#### **PRELIMINARY STATEMENT**

5. Jurisdiction is proper pursuant to Article 1, Section 12 of the Constitution of the State of Indiana which provides that all courts "shall be empowered with the ability to administer justice freely, and without purchase; completely and without denial; speedily and without delay." This Section provides that the Court must have the ability to secure its own freedom of action and to carry on its own business with dignity, decorum, order, due dispatch and convenience. *See Carlson v. State*, 220 N.E.2d 532 (Ind. 1966).
6. Thus Article 1, Section 12 of the Indiana Constitution empowers the Court to hire and supervise its employees and to fix their remuneration. Further this section of the Indiana Constitution empowers the Court to fix its reasonable operating expenses and to determine and then provide for its spatial needs.

7. The Trustee has failed to provide the Court necessary space, proper equipment and sufficient supplies for the Court to function properly and serve the more than 11,500 litigants who annually seek adjudication of their disputes. Furthermore, Defendant Trustee has determined who is employed by the Court and has not allowed the Court consultation on hiring of court staff. Nor has the Trustee consulted the Court on the training, promotion or disciplining of court staff.

**Failure to Pay Reasonable and Necessary Expenses**

8. In order to function properly the Court must have the ability to contract the services of attorneys as judges *pro tempore* or temporary judges and to contract the services of interpreters.
9. To provide consistency and to be more efficient, it is preferable that a judge *pro tempore* be familiar with the Court's operating procedures, well-versed in the inner workings of the Court or otherwise properly trained to handle the day to day business of the Court in the absence of the presiding Judge.
10. The Court primarily uses the services of one (1) particular attorney since doing so reduces the amount of time the Court would spend training an attorney who is unfamiliar with the law as it applies to smalls claims court.
11. The Court has set the compensation for this judge *pro tempore* at One Hundred Dollars (\$100) per court session. Since 2002, there have been numerous occasions when the Trustee's office has issued payment at a rate of One Hundred Dollars (\$100) per session, for the services of a judge *pro tempore*. However in 2006, the Trustee stopped making these payments.

12. The Trustee has refused to pay this reasonable compensation to the attorney who has been contracted by the Court to serve as its judge *pro tempore* during the judge's absence or as temporary judge to aid the Court in handling a crowded Court docket.
13. The Court owes this permanent judge *pro tempore* Two Thousand Two Hundred Dollars (\$2,200).
14. Furthermore, in order for the Court to function properly it must sometimes engage the services of an certified interpreter.
15. The Court has set the compensation of a interpreter at One Hundred Dollars (\$100) per court session. There have been occasions when the Court has experienced problems securing payments for the services of a certified interpreter.

**Hiring, Supervising and Disciplining Court Employees**

16. In order for the Court to function properly, the Court must be able to hire supervise and discipline its own staff.
17. Further, hiring, training and supervision of the Court's employees is important since the judge is held responsible for the employees' behavior under the Code of Judicial Conduct.
18. The Trustee has determined who the clerks of the Court are, and has not allowed the Court consultation on hiring of court staff. Nor has the Trustee consulted the Court on the training, promotion or disciplining of Court staff.

19. In 2005, one of the Court's clerks sought a seat on the city-county council, informing the Trustee but not the Judge. She believed that her employer was the Trustee.
20. To solve the obvious violation of Canon 5 A. (f) of the Code of Judicial Conduct, the judge sought to have the Trustee transfer the employee to his office for the duration of the campaign.
21. The Trustee refused to do so until the Judge sought an opinion on the issue from the Judicial Qualifications Commission stating that it is a violation of Canon 5 A. (f) for the employee to run for partisan political office while employed at the Court.
22. The Court was acutely embarrassed that it was forced to seek a statement of the obvious meaning of the Canon before the Trustee would reassign the employee to his office for the duration of the political campaign.
23. Further, in August 2006, the Trustee required the Judge to record her objections to the poor work performance of one of the Court's clerks.
24. The Trustee would not consider discipline of the clerk until the Court drafted a four (4) page letter giving specific details of the clerk's failure to perform.
25. With a case load of nearly 12,000 cases per year, the Court does not have the time to comply with such demands of the Trustee.

### Provision of Equipment

26. The Trustee and the Board have failed to provide the court with proper equipment necessary to provide speedy justice to litigants as required pursuant to IC 33-34-6-2.
27. For example, this year the Trustee provided the Court with a used printer to replace its malfunctioning printer.<sup>1</sup>
28. In 2004, the Court asked the Trustee to provide it with the following pieces of equipment:
- A check printer to quickly print checks in payment of garnishment orders,
  - Label printer for use in labeling its files, and
  - Office dividers so that employees may have some degree of privacy to enhance concentration.
29. To date the Trustee has failed to fulfill these requests for appropriate equipment.

### Annual Budget

30. The Trustee does not consult the Court on the drafting of its annual budget which the Trustee presents to the Board for approval.
31. In order for the Court to function properly, the Court must be able to draft its own budget for presentation to the Board.

---

<sup>1</sup>The Court composes its own orders and prints them for mailing to inform *pro se* litigants of action taken at their request.

### Appropriate and Functional Space

32. In order for the Court to function properly, the Court must have appropriate and functional space to operate with a caseload which averages 12,000 cases per year.
33. The Court has 1,615 square feet for its office, courtroom, the clerks' workspace and storage. In this space the Court must house its six (6) clerks, the bailiff/constable their equipment, supplies and more than 12,000 files-in addition to the Judge's private office.
34. With only 1,615 square feet the Court cannot provide its personnel with productive work space. Nor can it offer counsel and/or *pro se* litigants the amenity of conference space to engage in discovery or resolve their disputes prior to a trial. Every other small claims court in Marion County has sufficient space to do so.
35. The Trustee has failed to provide the Court with appropriate and functional space to operate efficiently as required by IC 33-34-6-1.

### Theory Of Case

36. This is a civil action for equitable relief from the oppression endured by Plaintiff, resulting from Defendants' violation of Plaintiff's rights as protected by the Constitution of the State of Indiana.
37. Plaintiff seeks relief from such oppression and urges the Court to issue a mandate, an injunction and declaratory judgment in favor of Plaintiff and against the Defendants herein.

38. Venue is proper because the acts complained of and the parties involved are situated within the State of Indiana, County of Marion.

**COUNT I - PROHIBITORY INJUNCTION AGAINST THE TOWNSHIP TRUSTEE**

39. Plaintiff incorporates by reference legal rhetorical paragraphs 1- 38 as if fully set forth herein and further alleges and states as follows:
40. Plaintiff moves this Court to enjoin the Trustee from hiring, supervising and disciplining the Court's clerks.

WHEREFORE, the Plaintiff, seeks the following relief:

- a. For this court to assume jurisdiction over this cause;
- b. To enjoin the oppressive conduct of the Trustee;
- c. To order the conduct complained of unconstitutional;
- d. To grant Plaintiffs costs of this action, reasonable attorneys' fees, with interest, and all other relief which is just and proper in the premises.

**COUNT II - MANDATORY INJUNCTION AGAINST THE TOWNSHIP TRUSTEE**

41. Plaintiff incorporates by reference legal rhetorical paragraphs 1- 40 as if fully set forth herein and further alleges and states as follows:
42. Plaintiff moves the Court to issue a mandatory injunction ordering the Trustee to pay the permanent judge *pro tempore* and the certified interpreter for their services.

WHEREFORE, the Plaintiff, seeks the following relief:

- a. For this court to assume jurisdiction over this cause;
- b. To order the equitable relief herein sought;

- c. To grant Plaintiffs costs of this action, reasonable attorneys' fees, with interest, and all other relief which is just and proper in the premises.

**COUNT III - DECLARATORY JUDGMENT**

43. Plaintiff incorporates by reference legal rhetorical paragraphs 1- 42 as if fully set forth herein and further alleges and states as follows:
44. The Plaintiff moves this Court to issue a declaratory judgment holding that the Plaintiff has the power and authority to hire, supervise and discipline its own employees.
45. The Plaintiff further moves this Court to issue a declaratory judgment holding that the Court has the authority to prepare and submit an annual budget to the Trustee's for his consideration and for the Board's approval.
46. Finally, the Plaintiff moves this Court to issue a declaratory judgment holding that the Court has the authority to order its own equipment and supplies, for payment by the Trustee.

WHEREFORE, the Plaintiff, seeks the following relief:

- a. For this court to assume jurisdiction over this cause;
- b. To order the equitable relief herein sought;
- c. To grant Plaintiffs costs of this action, reasonable attorneys' fees, with interest, and all other relief which is just and proper in the premises.

**COUNT IV - SEPARATION OF POWERS**

47. Plaintiff incorporates by reference legal rhetorical paragraphs 1- 46 as if fully set forth herein and further alleges and states as follows:

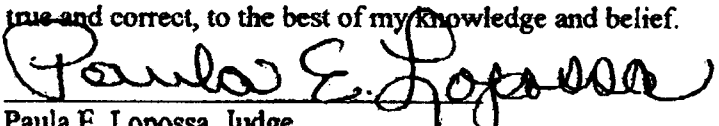
48. The Trustee's control of the Court violates Article 1 Section 12 of the Indiana Constitution by preventing the Court from administering "justice freely ... completely ... speedily and without delay".
50. In order for the Court "to operate independently, freely and with absolute integrity" the Court must not be hampered and interfered with for lack of funds withheld by the Trustee or the Board. See Carlson v. State, 220 N.E.2d 532, 535 (Ind. 1966).
51. The Plaintiff moves the Court to enjoin the Defendants from interfering with application of the Court's Constitutional and Discretionary powers.

WHEREFORE, the Plaintiff, seeks the following relief:

- a. For this court to assume jurisdiction over this cause;
- b. To declare the conduct complained of unconstitutional;
- c. To order the Defendants to pay the outstanding fees complained of herein;
- d. To grant Plaintiffs costs of this action, reasonable attorneys' fees, with interest, and all other relief which is just and proper in the premises.

**VERIFICATION**

I, Paula E. Lopossa, the duly elected and qualified Judge of the Marion Small Claims Court Center Township Division, hereby swear or affirm under the penalty for perjury that the foregoing representations are true and correct, to the best of my knowledge and belief.

  
Paula E. Lopossa, Judge

Respectfully submitted,

  
Norman L. Reed, Attorney for Plaintiff