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Argument About What the Judge Actually Ordered

OK, I got a case. I'm representing two defendants, husband and wife. Motion for summary judgment, we troop off to hearing, back in April. We spend most of the time arguing about wife's behavior ; judge grants summary judgment. After judge grants that, I ask whether it applies to husband, judge kind of hems and haws and then says something like "uh, no, I don't think so, that's different". Yeah, yeah, I know, but this judge is not the clearest in his rulings; I've had other hearings in front of him and both the other attorney and I have walked out wondering exactly what he ruled, and god forbid you should suggest he is less than clear. Judge indicates that plaintiffs atty should draw up order and run it past me before submitting it.

So, no court reporter, no tape. But I'm 99% certain judge indicated summary judgment was only against wife. Plaintiffs lawyer waits until last week, end of July, to draw up proposed order. Runs it past me, and it's granting judgment against both H and W. I object, politely, and suggest he talk to other attorney who was present. I get fax yesterday from him saying he talked to other attorney and his recollection is judgment was against both H and W. Now, obviously, had lawyer for plaintiff drawn this up within a week or two, everyone's (including judges) recollection would be better. Plaintiffs attorney indicates that he will submit order to judge Monday unless he hears from me: I'm not entirely sure what to do. Submit it but inform judge of my objection? Bring motion to clarify? Exactly what do you do when you have this sort of dispute?

When I disagree with a proposed order I usually submit my own, with a cover letter explaining to the judge that my version more accurately reflects the oral ruling.

Wendell Finner

I have filed an "ex parte motion to clarify court's ruling" before and boy, it went over like a ton of bricks. I would do it again though in your scenario -- keep it very short, but maybe include a sentence or two of argument to remind the judge of why it is judgement against wife only, and a declaration of your exact memory of what was said.

Best of luck! It's this kind of nuttiness that drives people out of litigation, so try to stay sane.

-- Amy Kleinpeter



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I would write a letter to the judge with your understanding of what happened at the hearing and attach an order that grants Summary Judgment against wife only. Of course you would send a copy to OC.

Dennis A. Chen

I phone the Judicial Assistant to give notice that I will send letter objecting to the proposed order expected to be submitted by other party.

In letter, I explain that the question has been discussed between the parties and cannot be resolved. I explain the differences between the parties, why I believe the differences occurred, and why I believe that I am correct. I apologize for the fact that there was no reporter. I say that I believe it was the movant's role to protect the judgment sought. I point out the fact that the matter can not be resolved on appeal without--at least--a hearing to reconstruct the record. I suggest rehearing to clarify the record.

Judge usually comes to understand this is not going away without more time expended--then will act some way to resolve the question.

If the judge signs the order over my objection, I move for Rehearing or Reconsideration (arguably not a proper motion but common) or, in the alternate, for a hearing to reconstruct the record.

I've been burned too many times by goofy opposed counsel. Mostly, I assure that there is a reporter for anything more than mere procedural motions.

John Page

I have instructed my scheduling assistant to have a reporter at all hearings unless I instruct her otherwise.

I get the impression that some of the judges just rule the way they feel the matter should be decided and not the way the law dictates, but they tend to follow the law when a reporter is present.

Dennis A. Chen

Some judges down here in Broward County don't even rule the way the law dictates when a reporter is present.

David A. Silverstone

Here, you send a letter to the judge stating that you object to plaintiff's form of the order and your reasons for objecting (even mentioning that you specifically asked this question and heard his honor say x); include your own proposed order. Of course, you send a copy to opposing counsel'. Some judge's will just sign one parties form or the other's; some will set a telephone hearing (always at 8:00 a.m. it seems); and some will make you come to the courthouse for the hearing.

Veronica M. Schnidrig

No question that the presence of a reporter will help to keep many judges close tot the line.

Recently had hearing where (nominal) opposed counsel from mega firm is rated among top 10 attorneys in FL. He sent petite, perky, young lady about 2 years out of law school--undoubtedly highly qualified.

No reporter because it was a motion to dismiss. I was 100% confident of the law and, if wrong, I'd still be able to replead. Prehearing, we had a nice discussion of the judge's activities as a part-time instructor at law school. That included his preference for women students who he believe were more dedicated. The attorney then invited him to address a woman attorney group. He accepted and asked to be remembered to her boss.

Needless to say, I lost. The outcome might have been the same with a reporter, but I would have avoided having my nose rubbed into the buddy system.

John Page

Some judges don't care.

In one hearing (court reporter present) where the judge ruled in my favor, opposing counsel kept citing the statute and case law and pointing out to the judge that he was making a mistake, even after the judge had ruled. The judge looked at him and said, "I've ruled. You don't like it, there's the Fifth DCA."

Dennis A. Chen

Some judges rely on the fact that most parties won't appeal. You should try for the opposite reputation.

A former FL Supreme Ct judge told me she never had more power than when she sat in trial court--could make decisions that she did not have to justify to anyone. At district and supreme levels, she always had to do some log rolling with the other panelists.

John Page

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