IN THE SUPREME COURT OF IOWA
No. 15-1375

DONNA JEAN HOLMAN

Appellant

vs.

STATE OF IOWA

Appellee

Johnson County No. SMSM067310
Appeal from the ruling of Judge Stephen C. Gerard, II

RESPONSE TO STATE'S RESISTANCE TO MOTION FOR SUBMISSION OF THE CASE

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COMES NOW the appellant, Donna Holman, pro se, to respond to Kevin Cmelik's (representing the state) "Resistance to Motion for Submission of the Case".

Cmelik says his failure to respond to my November 3 Proof Brief, or to communicate with me about the appendix as required by 6.905[1], or to respond to my December 9th 15-day deadline notice (which I have theorized constitutes the Clerk's 15-day notice), should be overlooked because I did not submit with my proof brief a designation of parts of the record.

> 6.905(1) An original and a copy of the designation of parts of the district court record to be included in the appendix shall be filed by each party when the proof copy of their required brief, other than appellant/cross-appellee's reply brief, is served and filed.

Cmelik further asserts that I *still* have not submitted said designation of parts, so his 30 day deadline to respond to me should not begin until I do, although he is willing to count my submission

1 The rule requires Appellee to negotiate with Appellant if he is dissatisfied with the contents of the Appendix, although if he is satisfied he only needs to indicate that with his reply brief. Rule 6.905 Appendix. 6.905(1) Designation of contents.

a. The parties are encouraged to agree as to the contents of the appendix.

b. An original and a copy of the designation of parts of the district court record to be included in the appendix shall be filed by each party when the proof copy of their required brief, other than appellant/cross-appellee's reply brief, is served and filed. One copy shall be served on all parties. An appellee who is satisfied with the appellant's designation need not designate additional parts for inclusion, but must file an original and a copy of a statement indicating the appellee is not designating additional parts of the record....

of the complete appendix as satisfying the requirement to designate parts of the record. He submits his extension of time request a full two weeks after the 15-day last-chance deadline which was given 9 days after he missed the first 30 day deadline.

My objection to his request to participate in the arguments at this point is not strong, but I would just like to clarify a few details as the Court considers his request.

Cmelik writes, "The law does not judge by two standards, one for lawyers and another for lay persons. *Id.* Rather, all are expected to act with equal competence."

Yet it seems to me that Cmelik is asking that a *lighter* standard be applied to him than to me. It is very hard for me to imagine that had it been *me* missing two deadlines plus the requirement to communicate with the other side about the appendix, that the Court would have granted *my* motion for extension of time to file a brief *and* to add to the Appendix, filed two weeks after the second deadline.

Cmelik argues that his 30 days to respond runs from the filing

of the designation of parts of the record to be included in the appendix. The Court rule does not provide that excuse: it says the 30 days runs from the filing of the appellant's proof brief.

> Rule 6.901(1)b Appellee's proof brief. Within 30 days after service of the appellant's proof brief, the appellee shall file either a proof copy of the appellee's brief, a written statement under rule 6.903(3) waiving the brief, or a combined appellee's/cross-appellant's brief pursuant to rule 6.903(5).

Cmelik not only wants to submit a reply brief, but wants the freedom at this late date to add to the appendix. (He apparently still hasn't decided if he wants to.) Rule 6.905[2] says that should have been done *before,* apparently, the first 30 day deadline, because he should have communicated with me about the changes he desired so we might agree. Had he done so, we could quickly have resolved misunderstanding about the proper form of the designation.

I of course could not communicate with him; first, because I had no reason to assume he wanted to file a brief at all, much less that he wanted any changes in the Appendix. But second, because

2 (see footnote 1)

the Attorney General's office had not even assigned Cmelik to the case until after the 15-day notice was sent.[3] Had I any reason to communicate with the "Appellee", I would not have known who to call.

To this day I don't know what form of a designation he wants. The "forms" section of the rules does not have an example of any such designation, and I found nothing online. So I thought I had satisfied the requirement by, in the body of my arguments, citing parts of the record my argument relied on, with the date, followed by (App. ____) to be filled in later with the page number where it would later appear in the Appendix.

I respect Cmelik's sentiment that the arguments of a pro se litigant should be competent, but I hope the Court will agree with me that this should be so with regard to the merits of arguments – how well they articulate facts and law – but not necessarily with regard to the minutia of rules and forms which are irrelevant to the truth, so long as mistakes there do not significantly impair

3 I base this on the notice sent by the Court about parties served. My December 9 receipt was served only on the Attorney General; not until my December 24 receipt do I see Cmelik designated.

due process.

I especially hope the Court will agree with me that justice should not be denied me because of requirements impossible for pro se litigants to meet because their details and forms are only available to attorneys.

I was even confused whether there should be any Appendix at all, because Rule 6.905(1)b says "...In designating parts of the record for inclusion in the appendix, the parties shall consider the fact that the entire record is available to the appellate courts for examination and shall not engage in unnecessary designation." By this standard I would think any designation at all would be "unnecessary", and am at a loss to understand what is "necessary".

As I said, my objection to Cmelik's request is not strong. His participation in arguments is not my primary concern.

One concern is that at my age, the time I have remaining to enjoy liberty is especially limited, and I do not want that precious time shortened or limited by delaying tactics or irresponsibility. I am concerned that this could be a harbinger of future delays.

The second is my concern that if he participates, he may proceed as I have seen in other cases, to not at all squarely address my arguments but to cast up some "Straw Man" which he can ridicule more easily. For example, is he thinking of saying something like "Ms. Holman should not expect to set aside the law in favor of her religious convictions about when life begins"?

I share my religious convictions on the sidewalk. In court, I argue American law. In fact, I can't imagine how my arguments can be refuted, *if they are squarely addressed and not side-stepped with lame Straw Men.* But I will be interested to see any serious attempt. Where I am wrong I will appreciate genuine evidence of it.

Should Cmelik participate, and squarely, honestly address my defense, I may consider his participation worth waiting for. Otherwise I will object to the senseless delay.

Certificate of Service

A copy of this brief was transmitted to Kevin Cmelik, Iowa Assistant Attorney General, by efiling it with the Iowa Supreme Court, on January 8, 2016.

Donna Holman

_____ January 8, 2016

Signature Date