

Kay Sieverding
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9/24/07

Re Request for investigation of
P.Elizabeth Wittemyer #207-2963

Colorado Supreme Court
Attorney Regulation Counsel
1560 Broadway Suite 1800
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To Whom It May Concern:

I complained that Ms. P. Elizabeth Wittemyer, in capacity as Routt County Deputy District Attorney, engaged in obstruction of justice and criminal deprivation of my rights. My understanding is that that would result in her being ordered to reply to my complaint. However, Mr. Samuelson wrote to me, letter dated 9/20/07 that "in order for this office to discipline an attorney, we must prove the attorney's misconduct by clear and convincing evidence."

Mr. Samuelson summarized my complaint as follows "you assert that there was not probable cause to support the charge". "Your letter indicates that the charges were eventually dismissed, but you complain that they were 'not dismissed in open court'".

I have interpreted Mr. Samuelson's letter as a request for additional information. Thus, I am providing the additional information under penalty of perjury. I can provide even more details if Ms. Wittemyer denies any of the below, which I believe is adequate to prove that Ms. Wittemyer engaged in criminal deprivation of my statutory rights as described in U.S.Code Title 18 section 242. Thus I am also requesting that the U.S. Attorney prosecute Ms. Wittemyer criminally. I am sending a copy of this to Troy Eid and to the U.S. Attorney Public Integrity Unit.

- 1.) I have no criminal record other than the accusation pursued and later dismissed by Elizabeth Wittemyer.
- 2.) I entered my social security number and date of birth into the Colorado Bureau of Investigation data base and it shows that I was never arrested in Colorado for any offense involving a fingerprint.
- 3.) My understanding is that I was never arrested in Colorado.
- 4.) I purchased my records from the Steamboat Police Department. These records did not include any

statement from any police officer that I had committed a crime.

- 5.) I have never received any criminal complaint directed to me in Colorado (or anywhere else).
- 6.) To the best of my knowledge, I have never been subject to a warrant from the Colorado Judicial branch.
- 7.) The prosecution of me that was pursued by Ms. Wittemeyer did not comply with Rule 4.1 County Court Procedure--Misdemeanor and Petty Offense--Warrant and Summons Upon Complaint as described in the Colorado Revised Statutes at <http://198.187.128.12/colorado/lpext.dll/Infobase1/1/52e4/52e6/534e/5399?f=templates&fn=fs-main-doc.htm&q=rule%204.1&x=Advanced&2.0#LPHit1>

Where the offense charged is a misdemeanor or petty offense, the action may be commenced in the county court as provided below in this Rule. This Rule shall have no application to misdemeanors or petty offenses prosecuted in other courts or to felonies.

(a) Definitions.

(1) "Complaint" means a written statement charging the commission of a crime by an alleged offender filed in the county court.

(2) Repealed.

(3) "Summons" means a written order or notice directing that a person appear before a designated county court at a stated time and place and answer to a charge against him.

(4) "Summons and complaint" means a document combining the functions of both a summons and a complaint.

(b) Initiation of the Prosecution.

(1) Prosecution of a misdemeanor or petty offense may be commenced in the county court by:

(I) The issuance of a summons and complaint;

(II) The issuance of a summons following the filing of a complaint;

(III) The filing of a complaint following an arrest;

(IV) The filing of a summons and complaint following arrest; or

(V) In the event that the offense is a class 2 petty offense, by the issuance of a notice of penalty assessment pursuant to statute.

(c) Summons, Summons and Complaint.

(1) Summons. A summons issued by the county court in a prosecution for a misdemeanor or a class 1 petty offense may be served by giving a copy to the defendant personally or by leaving a copy at the defendant's usual place of abode with some person over the age of eighteen years residing therein or by mailing a copy to the defendant's last known address by certified mail, return receipt requested, not less than ten days prior to the time the defendant is required to appear. Service by mail shall be complete upon the return of the receipt signed by the defendant. Personal service shall be made by a peace officer or any disinterested party over the age of eighteen years.

(2) Repealed.

(3) Summons and Complaint. A summons and complaint may be issued by any peace officer for an offense constituting a misdemeanor or a petty offense:

(I) Committed in his presence; or

(II) If not committed in his presence, which he has probable cause to believe was committed and probable cause to believe was committed by the person charged.

Except for penalty assessment notices which shall be handled according to the procedures set forth in section 16-2-201 and subsection (e) of this Rule, a copy of the summons and complaint shall be filed immediately with the county court before which appearance is required and a second copy shall be given to the district attorney or his deputy for such county.

(4) Content of Summons and Complaint. A summons and complaint issued by a peace officer shall contain the name of the defendant, shall identify the offense charged, including a citation of the statute alleged to have been violated, shall contain a brief statement or description of the offense charged, including the date and approximate location thereof, and shall direct the defendant to appear before a specified county court at a stated time and place.

(d) Arrest followed by a Complaint. If a peace officer makes an arrest without a warrant of a person for a misdemeanor or a petty offense, the arrested person shall be taken without unnecessary delay before the nearest available county or district judge. Thereafter, a complaint shall be filed immediately in the county court having jurisdiction of the offense and a copy thereof given to the defendant at or before the time he is arraigned. The provisions of this Rule are subject to the right of the arresting authority to release the arrested person pursuant to section 16-3-105.

(e) Penalty Assessment Procedure.

(1) When a person is arrested for a class 2 petty offense, the arresting officer may either give the person a penalty assessment notice and release him upon its terms, or take him before a judge of the county court in the county in which the alleged offense occurred. The choice of procedures shall be based upon circumstances which reasonably persuade the officer that the alleged offender is likely or unlikely to comply with the terms of the penalty assessment notice.

(2) The penalty assessment notice shall be a summons and complaint containing identification of the alleged offender, specification of the offense and applicable fine, a requirement that the alleged offender pay the fine or appear to answer the charge at a specified time and place, that payment of the specified fine without an appearance is an acknowledgment of guilt, and that an appearance must be made or the specified fine paid on or before a certain date or a bench warrant will issue for the offender's arrest. In traffic cases, the penalty assessment notice shall also advise the traffic offender of the immediate consequences of payment of the specified fine without an appearance.

(3) In traffic cases, a duplicate copy of the notice shall be sent by the officer to the Colorado department of revenue, motor vehicle division, Denver, Colorado. In all cases, a duplicate copy shall be sent to the clerk of the county court in the county in which the alleged offense occurred.

(4) If the person given a penalty assessment notice chooses to acknowledge his guilt, he may pay the specified fine in person or by mail at the place and within the time specified in the notice. If he chooses not to acknowledge his guilt, he shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be that specified in the notice for the offense of which he was found guilty, but customary court costs may be assessed against him in addition to such fine.

(f) Failure to Appear. If a person upon whom a summons or summons and complaint has been served pursuant to this Rule fails to appear in person or by counsel at the place and time specified therein, a bench warrant may issue for his arrest. In the case of a penalty assessment notice, if the person to whom a penalty assessment notice has been served pursuant to this Rule fails to appear in person or by counsel, or if he fails to pay the specified fine at a specified time and place, a bench warrant may issue for his arrest.

History

Source: (a) amended March 15, 1985, effective July 1, 1985; (f) amended June 9, 1988, effective January 1, 1989; entire rule amended and adopted May 27, 2004, effective July 1, 2004.

Annotations

ANNOTATION

Analysis

I. General Consideration. • II. Summons, Summons and Complaint.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 5 Am. Jur.2d, Arrest, §§ 19, 20, 25, 27, 29-33, 50.

C.J.S. See 42 C.J.S., Indictments and Informations, §§ 82, 99, 113.

Applied in Jeffrey v. District Court, 626 P.2d 631 (Colo. 1981); May v. People, 636 P.2d 672 (Colo. 1981); People v. Abbott, 638 P.2d 781 (Colo. 1981).

II. SUMMONS, SUMMONS AND COMPLAINT.

Minimum requirements of a summons and complaint under this rule are: (1) The name of the defendant, (2) the offense charged, (3) a citation of the statute alleged to have been violated, (4) a brief statement or description of the offense charged, including the date and approximate location thereof, and (5) the direction that the defendant appear before a specified county court at a stated date, time, and place. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971). See Stubert v. County Court, 163 Colo. 535, 433 P.2d 97 (1967).

General assembly did not intend that such a summons and complaint be verified. Stubert v. County Court, 163 Colo.

535, 433 P.2d 97 (1967); Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

Only peace officers may sign. The only persons designated as having the authority to sign such a summons and complaint are peace officers. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

It is sufficient that the summons form alleges that complainant "knows or believes", rather than stating more formally that he "knows or has reason to believe", that the accused committed the offense charged. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

Prosecution for a misdemeanor charge was properly initiated in accordance with subsection (d) of this rule when the defendant posted bail and executed his appearance bond, thereby waiving service of the complaint on him until his appearance date. This procedure also complies with § 16-2-112 and related rules, which do not require that a person charged with a misdemeanor be given a copy of the complaint until at or before the time he is arraigned. Weld County Court v. Richards, 812 P.2d 650 (Colo. 1991).

The statutes and procedural rules do not require that a person charged with a misdemeanor be given a copy of the complaint prior to being released on bail. Weld County Court v. Richards, 812 P.2d 650 (Colo. 1991).

- 8.) 4.1b(II), issuance of summons following the filing of a complaint, was not applicable because no separate complaint was filed.
- 9.) 4.1b(III), filing of a complaint following an arrest, was not applicable because there was no arrest.
- 10.) 4.1b(IV), filing of a summons and complaint following arrest, was not applicable because there was no arrest.
- 11.) Although I was accused of a class III misdemeanor, harassment, punishable by 6 months in jail, the document that I received was a combined summons and complaint. It was deficient according to the legal requirements in the following ways:
 - a.) It was not signed by a peace officer as is required.
 - b.) There was no location as to where the alleged harassment occurred.
 - c.) There was no description of the offense charged.
 - d.) Because there was no warrant, according to d I should have been taken without delay before the nearest available judge. However, I was not taken before a judge.

- 12.) The summons and complaint, which was signed only by Jane Bennett, and was deficient as discussed above was used as the basis for the issuance of a restraining order on me.
- 13.) Ms. Wittemeyer knew that the summons and complaint was used as the basis of a restraining order and did not take corrective action.
- 14.) A lawyer that I hired outlined the events to Ms. Wittemeyer. This consisted of my driving home with my son who I had picked up at school and taken to the store. When we ended up at the intersection, I was behind my neighbor Jane Bennett, who was also driving home. I honked at her because I wanted to talk to her. I turned left and went home and parked in my driveway, which was about 150 feet from Mrs. Bennett's driveway. I then went on foot to the street in front of Mrs. Bennett's home. There I said to her "just because your husband is president of the city council doesn't give you a right to break the law". She and others claim I yelled that their construction was against the local zoning laws and that they were violating the constitution by building in violation of the statute. By this I meant that Mr. Bennett was using his political position to avoid conforming to a mandatory requirement in law, which affected my property as adjoining neighbor. Some of the witnesses claim I called Kevin Bennett an "ass-ole", which others contradict. In any case, that would not be a crime. Then without going on Mrs. Bennett's property I went home. In addition to Mrs. Bennett and my son, Mrs. Bennett's husband and two construction workers employed by the Bennetts were present.
- 15.) Mrs. Bennett claimed under oath that people had witnessed me on her property and that her workers were afraid of me, but she produced no witnesses who claimed either. In fact, at the restraining order hearing:
Marc Wilk, Jane Bennett's employee and witness, testified under oath on September 6, 2000, that he had seen Kay Sieverding approximately 20 times in the 60 + days proceeding 8/29/00 when he worked outside at the Bennett's residence next to Sieverdings and that on those occasions Sieverding was gardening. (Transcript 09/06/2000 p. 33, lines 4-10.) Kay Sieverding asked Marc Wilk "when you saw me, did I seem like I was going about normal business, with the possible exception that I garden more than most people do?" (Transcript Routt County 002180 Sept./6/00 p. 35 lines 23-25) Marc Wilk, Bennetts' employee and witness, answered, "Well you know, yes" (Transcript Routt County 002180 Sept./6/00. 36, line 1.)
- 16.) There were two hearings related to the restraining order. At neither one did a police officer appear to

testify that a crime was convicted. Mrs. Bennett said under oath:

- a.) In the court appearance before Colorado District Judge Thompson (in same court building) on August 31, 2000, Judge Thompson asked Jane Bennett "She's (referring to Kay Sieverding) not following you around town, or anything like that?" Jane Bennett answered, "Uh, I don't believe so" (Transcript Routt County 002180)
- b.) In the court appearance before Judge Thompson on August 31, 2000, Judge Joel Thompson asked Jane Bennett "She's not calling you late at night" (referring to Kay Sieverding). Jane Bennett replied "She may have called me in the night years past. I can't remember the date. She called one time... that was like a couple of years ago" (Transcript Routt County 002180 August/31/2000 page 6 lines 7-10). 180 August/31/2000, page 5 lines 17-18)
- c.) In the court appearance before Judge Joel Thompson on August 31, 2000, Judge Joel Thompson asked Jane Bennett "There has been no offensive touching?" Jane Bennett answered "no". "She hasn't shoved, or pushed, or kicked, or anything like that? Jane Bennett "Not me, no." (Transcript Routt County 002180 August/31/2000).
- d.) In the court appearance before County Judge James Garrecht on September 6, 2000, Kay Sieverding asked Jane Bennett if they had any interaction between a planning department meeting when Kay Sieverding had suggested they go out for coffee in the winter of 2000 and August 29, 2000 and Jane Bennett answered, "I don't recall interacting with you." (Transcript Routt County 002180 Sept./6/2000 pages 93-94).
- e.) Kay Sieverding asked Jane Bennett about their conversation about a week before the restraining order hearing when Jane Bennett was leaving a neighbor's house directly across from Sieverdings' drive, asking "Did I say anything to you on any other subject other than the smelling of smoke that being the day that the condominiums burned?" and Jane Bennett answered "No". (Transcript Routt County 002180 Sept./6/2000 page 93 lines 10-20).
- f.) In the court appearance before Judge James H. Garrecht on September 6, 2000, Kay Sieverding asked Jane Bennett "Have I ever physically threatened you?" and Jane Bennett answered, "I don't know what you mean." (Transcript Routt County 002180 Sept./6/2000 page 99 lines 4-7)
- 17.) I filed a response to the restraining order complaint, which attested that I committed no crimes.

- 18.) Following the filings of these documents, Ms. Wittemyer kept the criminal charges open from Sept to April solely to hurt me and my family and for no legitimate purpose.
- 19.) Ms. Wittemyer failed to disclose to me that there was no evidence that I committed a crime even though that is required by VIID
- “(2) The prosecuting attorney shall disclose to defense counsel any material or information within his possession or control which tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefore” and that is to be done within 20 days:
- “The prosecuting attorney shall perform his or her obligations under subsections (a)(1)(I), (IV), (VII), and with regard to written or recorded statements of the accused or a codefendant under (VIII) as soon as practicable but not later than twenty calendar days after the defendant's first appearance at the time of or following the filing of charges, except that portions of such reports claimed to be nondiscoverable may be withheld pending a determination and ruling of the court under Part III but defense counsel must be notified in writing that information has not been disclosed.”
- 20.) I filed a written statement in the district attorneys office in the first week of Sept 2000 which said that police officer Kirby Blackmun had come to warn me that the “d.a’s office is in on” the plot to get a restraining order on me.
- 21.) Knowing this, Ms. Wittemyer had a duty to interview Kirby Blackmun and make available the results of the interview because
- “(1) Upon defense counsel's request and designation of material or information which would be discoverable if in the possession or control of the prosecuting attorney and which is in the possession or control of other governmental personnel, the prosecuting attorney shall use diligent good faith efforts to cause such material to be made available to defense counsel.” Rule 16.
Discovery and Procedure Before Trial

The statutory procedure for dismissal by the state, as Ms. Wittemyer did in People v. Sieverding requires “Rule 48. Dismissal

- 22.) (a) By the State. No criminal case pending in any court shall be dismissed or a nolle prosequi therein entered by any prosecuting attorney or his deputy, unless upon a motion in open court, and with the court's consent and approval. Such a motion shall be supported or accompanied by a written statement concisely stating the reasons for the action. The statement shall be filed with the record of the

particular case and be open to public inspection. Such a dismissal may not be filed during the trial without the defendant's consent.''

- 23.) Ms. Wittemyer's procedures in dismissing the case did not comply with rule 48. [There was no public hearing, she did it out of court, in a way that my attorney and I protested.]
- 24.) Ms. Wittemyer altered the standard multiple choice form to say that there was probable cause and Jane Bennett was my victim. She did this to hurt me, to create a public record that I was guilty even though I pled not guilty and the facts alleged did not indicate a crime.
- 25.) Ms. Wittemyer purchased insurance from Lloyds of London even though she had reason to believe that they were not licensed to sell direct insurance in Colorado.
- 26.) Ms. Wittemyer knew that there was required disclosure of the interests of Lloyds of London when I filed in federal court but allowed her attorney David Brougham to skip that requirement.
- 27.) For the reasons above, as well as additional reasons, I believe that Ms. Wittemyer deprived my statutory rights Under Color of Law.
- 28.) For these reasons I believe that Ms. Wittemyer should be disbarred as well as criminally prosecuted for deprivation of rights under color of law under Federal Criminal Statute Title 18 section 242.

Sincerely

Kay Sieverding

Cc: Troy Eid, U.S. Attorney
1225 17th Street•Suite 700•Denver, CO 80202

I certify under penalty of perjury under U.S. law that the statements
Above are true. Executed on 9/24/07