

C. Michael White
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February 25, 2005

Frederick S. "Rick" Spencer
Attorney at Law
409 E. 6th St.
Mountain Home, AR 72653-3907

RE: Affidavit

Dear Rick,

I have enclosed a hard copy of the affidavit that I emailed you today. I assume you got it ok. I have signed the affidavit, but I didn't get it notarized.

Thanks,
Mike



STATE OF ARKANSAS

COUNTY OF PULASKI

AFFIDAVIT

Comes now C. Michael White, Attorney at Law, and after being duly sworn, states:

[1]

“That I was an employee of the Full Worker’s Compensation Commission as an attorney from November of 1990 to September of 1995, and my duties involved assisting former Chairman James Daniel;”

(2)

“That I served as an Administrative Law Judge of the Worker’s Compensation Commission from September of 1995 to September of 2004; At some point, beginning to the best of my recollection in approximately mid 1997 and extending until approximately July of 2003, I was assigned to conduct hearings in the territory that included North Central Arkansas, including Mountain Home.”

(3)

“That Frederick S. “Rick” Spencer appeared before me in numerous claims while I was assigned to the North Central Arkansas territory, and he represented claimants exclusively during these times; In addition, I reviewed claims where Mr. Spencer represented the claimant during the time that I worked as an attorney reviewing appeals to the Full Commission; I was always impressed with the skill he demonstrated in presenting claims before me; Perhaps even more impressive was his compassion for his client, the zealotness with which he presented their claims, and his commitment to representing his clients’ best interests; I never felt that he was intentionally dilatory with the scheduling or litigation of his client’s claims; I always felt that he had the best interests of his clients at heart; Because he is essentially the only attorney who will represent claimants in that entire region of the state, Mr. Spencer has an extremely heavy workers’ compensation case load in addition to the other areas of his practice, and, considering the size of his case load, I feel that Mr. Spencer handles all of his cases in an expeditious and organized manner; If Mr. Spencer were to stop representing workers’ compensation claimants, an extremely large number of injured workers in this state would be unable to obtain legal advice and competent representation and, in a large portion of these claims, would not receive the benefits that they are entitled to receive; In fact, when I was assigned a claim where Mr. Spencer was representing the claimant, I knew that the claim would be well-prepared and presented with a degree of competence that equaled or exceeded any other attorney in that territory, and most in the state; Further, it was my observation that most of the lawyers who represented the respondents

before the Commission respected and praised Mr. Spencer's representation of his clients and that they seemed to get along personally in spite of their zealous representations of their respective clients during hearings."

(4)

"That I have seen the order of ALJ Churchwell in Tony Long v. Walmart Stores where he refers to Mr. Spencer's "theory" that the Commission has dictated that pressure should be put on Mr. Spencer through the administrative law judges' handling of his claims; Furthermore, it is my belief that Judge Churchwell's actions and comments are driven by his concern for job security and as the result of pressure put on administrative law judges to "handle" Mr. Spencer in a manner that is contrary to the best legal judgment of he judge, contrary to the law, and contrary to the Constitution of the United States of America and the State of Arkansas."

(5)

"That the statistical research cited by Judge Churchwell, which he incorrectly describes as "legal research," unfairly compares Mr. Spencer's huge voluminous practice of workers' compensation claims to the practices of attorneys who obviously have no where near the volume of Mr. Spencer's work load; that I know personally that Mr. Spencer has not only a huge WCC practice, but enjoys also a large SSA and PI practice; That Mr. Spencer carries such a high volume of workers' compensation claims only because other attorneys in that region of the state will not represent workers' compensation claimants; that, consequently, that it is an unfair to compare Mr. Spencer's record to the records of attorneys who have very limited WCC practices.

(6)

"Further, Judge Churchwell's conduct exceeds his statutory authority in that he goes outside the record before him to legitimize what is clearly an unfair policy: i.e. to not grant continuances to the claimant and the respondent where all parties request the same; he flagrantly attempts to legitimize going outside the record by labeling it "legal research," a term which refers to researching the statutory and case law related to an issue, not to the gathering of evidentiary facts such as those cited by Judge Churchwell."

(7)

"That Mr. Spencer's perceptions about the treatment he has received from Judge Churwell as well as other administrative law judges, is not a theory but, based on my personal knowledge and actual observations, is consistent with the directives of the Commission, as expressed by the Chief Administrative Law Judge, David Greenbaum, and acquiesced to by the former Chief Executive Officer of the Commission, Julie Bowman, and by the Commissioners."

(8)

“That the Chief Administrative Law Judge, David Greenbaum, personally chastised me on numerous occasions because of my failure to “handle” Mr. Spencer properly; These comments were directed primarily at my granting of Mr. Spencer’s requests for continuances and other extensions of time, but they also included the fact that I allowed Mr. Spencer to present all evidence and testimony on behalf of his client that I deemed relevant under applicable constitutional and legal standards; In most, if not every situation where I granted a continuance or extension for Mr. Spencer, it was with the agreement of the opposing side and based on a showing of good cause by Mr. Spencer; Judge Greenbaum also vaguely accused me of allowing Mr. Spencer to “manipulate” my docket, an accusation that Judge Greenbaum never explained and which I never agreed with; These allegations were made during one-on-one conversations between myself and Judge Greenbaum, during conversations when other administrative law judges were present, and during the formal administrative law judge meetings that were periodically conducted; Julie Bowman, the former Chief Executive Officer of the Commission, and, on occasion, one or more of the Commissioners, were present at times during these formal meetings when these statements were made by Judge Greenbaum; Considering the ratio of claims filed by Mr. Spencer to the number of continuances he requested, he sought continuances in no greater percentage of claims than other volume practitioners in this state; Thus, because of Judge Greenbaum’s position of authority as Chief Administrative Law Judge, I could only conclude that I was being directed to manage cases involving Mr. Spencer differently from cases involving other attorneys and in a manner that was contrary to my best legal judgment and in a manner that would have violated ethical as well as the statutory dictates under which I was bound to perform the functions of my job; The failure of Ms. Bowman or either of the Commissioners to respond in any manner when Judge Greenbaum made these accusations led me to the conclusion that they concurred and acquiesced with the directions that I was receiving from Judge Greenbaum.”

(9)

“That I believed then, and that I still believe, that the “handling” of Mr. Spencer that was being directed by Judge Greenbaum and the Commission would have resulted in a violation of his clients’ due process rights, under the Constitutions of the United States of America and Arkansas; I communicated my constitutional concerns as well as other concerns to Judge Greenbaum; I also expressed the belief both in private conversations with Judge Greenbaum and in formal meetings that the treatment of Mr. Spencer that he proposed would cause Mr. Spencer to stop handling workers’ compensation claims, a result that would be detrimental to the workers’ compensation system in the State of Arkansas; Judge Greenbaum’s response to these statements led me to believe that he and the Commission would favor that result.”

(10)

That a meeting of the administrative law judges was held during, as I recall, May or June of 2003; During this meeting, the judges were advised that territory changes were

going to be made; Although, I could not have returned to the north central Arkansas territory due to an informal policy of the Commission, Judge Greenbaum expressly told me in the presence of all of the judges working out of the Little Rock office, including the judges who were ultimately assigned to that territory, that I would no longer be allowed to hear cases in north central Arkansas, and he indicated that the reason I couldn't return to that territory was because of his opinion that I failed to properly "handle" Mr. Spencer; During this meeting, Judge Greenbaum also expressed the expectation that Mr. Spencer should be "handled" differently thereafter by the new judges assigned to that territory, and he discussed his specific expectations of the judges who would be assigned to the north central Arkansas territory; This included the expectation that continuances would be limited; After this meeting, other judges told me that they felt that Judge Greenbaum publicly criticized me at that particular time to send a message to the new judges in the territory about how they should "handle" Mr. Spencer; At least one of the judges who was assigned to the north central Arkansas territory at that time came to me afterward and expressed to me the belief that he felt that he was expected to "handle" Mr. Spencer in accord with Judge Greenbaum's expectations."

(11)

"That during the time I worked for the Full Commission I overheard conversations on a number of occasions that indicated that the Commission's decisions were influenced by political influences and not by the law or the facts of the particular case before the Commission; That, as an employee of the Full Workers' Compensation Commission, that I was directed to interpret the amendments to the Workers' Compensation law that were enacted by Act 796 of 1993 in a manner that was favorable to respondents because of the direction the "political winds" were blowing at that time; that as an administrative law judge I continued to see the affect of these "political winds" on the decisions of the Commission, both in their administrative decisions and in the disposition of appeals; I have been involved in conversations with other administrative law judges where the effect of deciding cases in favor of claimants on a judge's job security was discussed; The prevailing opinion among the judges during the time I was with the Commission was that deciding cases in favor of claimants created a high risk of termination; The judges were aware that Eileen Harrison's employment as an administrative law judge was terminated because she was perceived as being too claimant friendly by the Executive Branch of the State of Arkansas; It was always my belief that I decided cases fairly and justly, by applying the law to the facts presented to me and that I did not allow concern about my job security affect my decisions; however, at all times, I was very cognizant that I had no control over the subconscious effect of these influences on my decisions; Other administrative law judges expressed similar concerns to me; That these concerns were exacerbated when Bill Daniels' employment as an administrative law judge was terminated, especially by the fact that he was advised that the Commission did not have to give a reason for his termination."

(12)

“That I have been advised by at least one administrative law judge who was hired under the administration of Governor Mike Huckabee that he was instructed when he was hired to keep in mind that this governor is very “business minded;” That the administrative law judge who was told this felt that he was being given directions to decide cases in a respondent oriented manner;”

(13)

“That my employment as an administrative law judge was terminated by the Commissioners on approximately September 29, 2004; that I was simply told that my services were no longer needed and that they did not have to give me a reason for that decision because I was classified as a Grade 99 state employee; That a higher number of my decisions had gone in favor of claimants in the year proceeding my termination; That I had experienced concerns prior to my termination that I was in jeopardy of losing my job because of the number of claims that I was deciding in favor of claimants. Since I was given no reason whatsoever for my termination when it happened or subsequently, only being told that I was an “at will” employee and could be fired for no reason, I believe that the only reason I was fired by the Commission was because I would not be influenced in carrying out my statutory duties and responsibilities as an administrative law judge with the Worker’s Compensation Commission to help in the Governor’s quest to make the State of Arkansas “business friendly; This included my refusal to manage cases with Mr. Spencer in the manner directed by Judge Greenbaum and the Commission.”

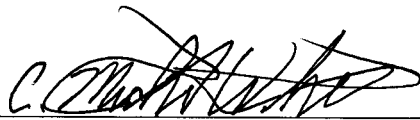
(14)

“That I have observed the number of attorneys willing to represent claimants diminish tremendously as a result of the changes in the law brought about by the enactments of Act 796 in 1993; I am aware of large, relatively highly populated areas of the state that are highly industrialized where there are no attorneys who are willing to represent claimants due to the effects of Act 796; For example, when I first started traveling to Harrison, Arkansas, I was conducting three to four full hearings every few weeks, as well as conducting a number of joint petition hearing; However, I was advised by the attorneys in that area that they were not going to continue representing workers’ compensation claimants, not only because of the complicated nature of the amended law, but because of what they described as the inequity of the decisions of the Commission; Within six months of having Harrison included in my territory, I was scheduling very few hearings, and, in fact, went for almost six months during one period that I did not schedule either a full hearing or a joint petition hearing in Harrison; If Mr. Spencer is forced out of his workers’ compensation practice, a result I sense the actions directed by Judge Greenbaum and the Commission will cause, then an even larger portion of the state will be left with no one to provide competent representation for injured workers.

(15)

“That Arkansas Workers’ Compensation Administrative Law Judges decide cases in a tense environment, with the knowledge that they are “at will” employees, subject to the whims of Governor Huckabee and his agents in the Commission, and with the knowledge that history has shown that they are expected to decide cases in accord with a politically influenced administrative policy, and not in accord with the law; That they are cognizant that history has shown that the failure to decide cases in accord with the politically influenced administrative policy can result in the loss of their job; That I was aware of this tension from the first day I began hearing cases; That I was aware of an even more tension when I started hearing cases in north central Arkansas, especially when I started hearing cases litigated by Mr. Spencer; Since I personally observed the same dictates passed along to the ALJ’s now serving north central Arkansas, it certainly is being felt by them also, and, in my opinion, the preservation of job security is a responsible in large part, if not entirely, for the comments of Judge Churchwell in the Tony Long claim;”

“Further, affiant saith not.”



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(501)920-3348

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF PULASKI

On this the 1 day of MARCH, 2005, before me, a Notary Public, the undersigned officer, personally appeared Mike White, known to me [or satisfactorily proven] to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

My Commission Expires:

1-18-15

