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IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

FILED

JAMES N. WELLS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JAMES JANSSEN, )  
 )  
 Defendant. )

No. 101220

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CLERK OF DISTRICT COURT  
SCOTT COUNTY, IOWA

RULING AND ORDER  
ON APPLICATION FOR  
CITATION OF CONTEMPT

On the 4th day of October, 2007, the plaintiff's contested application for citation of contempt was presented to the Court for an evidentiary hearing. The plaintiff appeared in person and represented by Attorney Thomas J. Yeggy. The defendant appeared in person and represented by Attorney J.E. Tobey III. The Court has considered the evidence admitted at hearing, the applicable law, the arguments of counsel, and now enters the following ruling.

PROCEDURAL BACKGROUND

James N. Wells filed a civil lawsuit against James Janssen. The matter was resolved by virtue of a jury trial in which the jury returned a verdict in favor of James Wells and against James Janssen. A judgment in excess of \$1,000,000 was entered against James Janssen and James N. Wells has attempted to collect that judgment. In an effort to receive payment on this judgment the Plaintiff has used legal remedies including garnishment of earnings; debtor's examinations to discover assets; and levies on stocks, accounts, and other personal property.

On June 15, 2007, Defendant James Janssen was ordered to appear before the Court for purposes of a debtor's examination. On that date the defendant did appear, but he did not produce all of the documentation as set forth in the court order. The defendant had been ordered to produce a summary of his Social Security earnings as issued by the Social Security Administration; monthly bank records and financial

statements for all financial institutions including but not limited to Wells Fargo for the period of time from April, 2003 through April, 2007; monthly records for six specifically identified Wells Fargo accounts; and monthly statement information from the house account showing a deposit for the amount necessary to purchase a house at 4315 West High Street, Davenport, Iowa and the check coming out of the account to purchase that residence.

On June 15, 2007 counsel for the plaintiff then filed an affidavit and this application for citation of contempt asking that the defendant be ordered to produce additional documentation and to give an accounting of an alleged dissipation of United States Treasury bonds valued at approximately \$711,000. The plaintiff filed the instant application and obtained an order setting a hearing to require Defendant James Janssen to produce all documents required by a previously entered order filed on May 25, 2007, and any additional documentation required by the circumstances. Hearing was set for July 2, 2007, but this date was continued and later set for hearing as held before the undersigned on October 4, 2007.

#### EVIDENCE SUMMARY

Numerous Series E and EE government bonds were purchased by James Janssen in his name and in the name of his sister, Dorothy Janssen, between 1970 and 1994. Gary S. Shapley, CPA, was retained as an expert witness by the plaintiff in this matter to examine certain documents relating to these bonds and to particular financial transactions made by James Janssen. To make determinations of amounts received from these Series E and EE bonds in 2003 and the use of the bond proceeds, Mr. Shapley examined a list of bond transactions from Wells Fargo; bond proceeds and subsequent disposition from three accounts at Wells Fargo; two accounts at Quad City

Bank; a list of photocopied bonds currently held; a Treasury Direct account for James; and a Treasury Direct joint account in the names of James Janssen and Dorothy Janssen.

The bonds examined were held in joint ownership which is usually done for convenience according to Mr. Shapley. Mr. Shapley explained that in the event of the primary owner's death the secondary owner becomes the sole owner and thus avoids probate and estate issues. An additional reason for joint ownership of bonds is to reduce income taxes by reporting the interest on two tax returns and thereby lessening the compounding tax effect of a single taxpayer reporting all the income. Also, joint ownership of bonds allows the receipt of taxable interest income by the secondary owner and does not leave an income tax trail to the purchaser, thereby facilitating the concealment of assets by the purchaser. Mr. Shapley noted that the control of the bonds can be retained by the purchaser so long as he retains the custody of the bonds.

By way of background it is noted that on May 22, 2003, the Quad City Times newspaper carried a story of the filing of a civil lawsuit against James Janssen, then a retired Catholic priest from the Diocese of Davenport. In this lawsuit allegations of repeated sexual abuse were made against James Janssen by a former altar boy identified only as "John Doe." On May 23, 2003, James Janssen and Dorothy Janssen began to redeem numerous bonds at Wells Fargo Bank.

By virtue of his examination of photocopies of bonds redeemed and interest statements on 1099 forms, Mr. Shapley concluded that between the interest and the principal on the bonds redeemed in 2003, James Janssen and Dorothy Janssen received total proceeds from those bonds in the amount of \$712,648. The bonds were endorsed and cashed by James Janssen or Dorothy Janssen, but not both, in blocks of

bonds ranging from two to twenty-eight in a group. Each of the bonds had been issued jointly with James Janssen as primary owner and Dorothy Janssen as secondary owner. The social security number of James Janssen was on all bonds.

Mr. Shapley testified that James Janssen endorsed bonds in a total amount of \$248,860. An amount of \$93,585 in principal from those bonds was retained by Dorothy Janssen. This left James Janssen with total proceeds from the interest on these bonds in the amount of \$155,275.

Dorothy Janssen endorsed bonds and received a total amount of proceeds of \$463,788 plus \$93,585 in principal she retained from James Janssen. In total, Dorothy Janssen received proceeds from these bonds in the amount of \$557,373. Mr. Shapley opines that the splitting of the bond proceeds between Dorothy Janssen and James Janssen appears to have been done based on James Janssen's anticipated cash needs for attorney fees and taxes.

The bond proceeds were disbursed by Wells Fargo Bank in various manners throughout 2003. The bank issued cashier's checks in the amount of \$555,501; cash in the amount of \$2,961; \$5,182 was placed in a Wells Fargo DDA account -065; and \$149,004 was placed in Wells Fargo DDA account -569. The cashed bonds yielded proceeds in the total amount of \$712,648. Direct deposits to the joint checking accounts were traced by bank statements. The cashier's checks, all of which were payable to Dorothy Janssen, were deposited in three different Wells Fargo accounts and two Quad City Bank accounts over a period of time. One cashier's check for \$29,154.40 was endorsed by Strieter Motors on September 22, 2004 for purchase of a vehicle, ostensibly for the use of Dorothy Janssen.

James Janssen offered an accounting of his use of the \$155,275 he had

received from the 2003 bond proceeds. He asserts that his expenses included \$66,000 for legal services by Attorney Ned Wehr; \$37,539 for federal income tax payments; \$11,500 for the purchase of a vehicle; \$20,000 as a contribution to trust/annuity; \$13,445 for a credit card payment; and other expenditures in a total amount of \$6,749. He does not account for the \$93,585 principal proceeds that generated this \$155,275 in interest which he spent.

Mr. Shapley determined that Dorothy Janssen's significant expenditures included income tax payments in the amount of \$98,919; earnest money in the amount of \$1,000 and \$173,903 to purchase a residence for a total of \$273,822. Adding together the amounts attributed to these expenditures by James Janssen and Dorothy Janssen, we still find that \$283,593 remains unaccounted for from the total bond proceeds of \$712,648.

Mr. Shapley examined Wells Fargo statements for the -569 account. This was originally a joint account but was changed to Dorothy Janssen, POD to James Janssen (August 2004) and changed again to Dorothy A Janssen Living Trust in June 2005. Both James Janssen and Dorothy Janssen have had Treasury Direct accounts.

The Treasury Direct account of James Janssen contained \$50,000, but was drained on or about May 30, 2002. However, the Treasury Direct account of Dorothy Janssen shows activity between July 26, 2000, and March 30, 2007, when a balance of \$100,000 was on the books. Mr. Shapley found that the joint Treasury Direct account was changed to Dorothy Janssen, POD James Janssen in October 2005 and later to the Dorothy A Janssen Living Trust in June 2006.

Additionally, Mr. Shapley was provided with photocopies of Series EE and I bonds currently held by Dorothy Janssen, payable on death to James Janssen. Based

on the serial numbers of those bonds Mr. Shapley determined that the bonds were issued in the periods of July through September of 2003 and in May of 2005. The funds used to purchase these bonds can be traced to the proceeds from the bonds which were cashed in at Wells Fargo. The bonds have a total price of \$102,500. Based upon the inventory of bonds report provided by James Janssen, Mr. Shapley was able to calculate accrued interest of \$11,174 through August 6, 2007, on this active bond inventory for a total value of \$113,674.

In tracing the bond purchases to checks, debit memos, and credit card charges, Mr. Shapley did note that James Janssen's inventory list does not include all of the bonds purchased. Missing from the defendant's inventory list is \$60,000 in bonds purchased with two \$30,000 checks written and signed by Dorothy Janssen on January 17, 2006. Also missing from Mr. Janssen's inventory list is \$20,000 in bonds purchased by credit card charges in 2003 as supported by The Citi Advantage 2003 transactions exhibit. Mr. Shapley reports that the information provided to him does not contain any subsequent 1099 tax forms to indicate that these missing bonds, which do total \$80,000, have yet been redeemed. There is accrued interest on missing bonds, but it cannot be determined until the serial numbers are made available.

Mr. Shapley's examination of the bonds and the bank documents provided to him also revealed that certain bonds were cashed in 2003 but the proceeds were not deposited on the same day. For example, on June 9, 2003, bonds in the amount of \$149,646 were cashed. However, \$102,176 from those proceeds was not deposited for 197 days after the cashing and \$47,470 was not deposited for 546 days after the bonds were cashed. Another example is that a number of bonds were cashed during the period beginning on September 2, 2003, and running through October 7, 2003, where

the proceeds were not deposited for periods of time ranging from 89 days up to 461 days. Mr. Shapley found these circumstances noteworthy, because while it would not be unusual for a bonds investor to cash a number of bonds at the same time, it is unusual for an investor to delay depositing a cashier's check for such extended periods of time as the investor is receiving no interest on the money during that period.

Based upon documentation provided by Defendants James Janssen and Dorothy Janssen to Mr. Shapley, in their possession there is still a bond inventory of \$102,500 plus a Treasury Direct account with \$100,000 for a total of \$202,500 remaining in located and identified assets. Accrued interest of \$11,174 added to this amount makes a total of \$213,674 in investments currently held.

Mr. Shapley notes two additional bond purchases in a total amount of \$60,000 which have not been accounted for, as well as the purchase of \$62,500 in bonds on the Citi Card in 2003. Mr. Shapley has located \$42,500 of that latter sum within the current bond inventory leaving \$20,000 in bonds from the Citi card that have also not been located and for which there is no accounting. After careful review of all of the financial information provided to him Mr. Shapley can recapture and track all of the financial transactions relating to the \$712,648 received from the bonds in 2003 with the exception of bonds purchased for a total amount of \$80,000.

It is Mr. Shapley's opinion that the purchase and sale of groups of bonds is normal investor activity, but the conduct of James Janssen and these financial transactions since 2003 is not such normal activity. Mr. Shapley points out that in 2003 James Janssen was cashing in large numbers of bonds on numerous occasions. Some of the bonds were not even mature yet which is unusual investor activity. Mr. Shapley also cites the holding of large amount cashier's checks for months without

investment to achieve any earnings as an example of abnormal activity by an investor. Based upon his professional experience as a CPA, Mr. Shapley concludes that there is no other reasonable explanation for conduct such as Mr. Janssen's conduct with the bonds in 2003 except that he was someone who was trying to hide money, and in an effort to do so, chose to cash bonds and delay negotiating the checks received in order to advance that goal.

James Janssen testified concerning the purchase and negotiation of the bonds between January of 1973 and October of 2003. He was unable to recall whether there were any bonds that he purchased during that period of time that he did not provide the cash which was used for the purchase. Although he thought his sister may have purchased some of the bonds too, he believed that she bought hardly any compared to the amount he had purchased. Mr. Janssen explained that his sister, Dorothy Janssen, relied upon him to advise her concerning investments and purchase of the bonds. He agreed that according to Exhibits 2 and 3 he did purchase two bonds each in the amount of \$30,000 on or about January 14, 2006.

Mr. Janssen recalled that when the bonds were purchased his name was first on each bond and his social security number was on each bond with his sister's name on the bonds in case of his death. At one point he wrote to the government and asked them to put his sister's name first on the bonds, but he recalled that his reply from the government was that Dorothy Janssen was still an owner. The government informed him that both he and Dorothy Janssen are owners of the bonds, but he does not have this letter anymore. Mr. Janssen was not sure that if he wanted to give the bonds to his sister, Dorothy Janssen, whether he could do so by going to the bank and having them reissued in her name alone.



The record was left open after the evidentiary hearing so that an effort could be made to locate the letter of response that Mr. Janssen received from the government. The Court has been provided with a copy of that letter from the US Treasury to James Janssen which is dated March 4, 2003 and relates to five Series EE savings bonds. The Court admits this letter as Defendant Exhibit A.

The letter prepared by Sandy Wingrove, customer service assistant, does respond to Mr. Janssen's request for a re-issue of the bonds and does explain that there is no advantage to name a principal co-owner as a second-named co-owner as both owners have the same rights and interest in the bonds. The writer explains that a bond that is co-owned may be paid to either of the co-owners at his or her request without knowledge or consent of the co-owner. The interest as paid is then reported to the IRS under the social security number of the individual who presented the bond for payment. Upon the death of one of the co-owners, the bonds become the sole property of the co-owner. In conclusion the customer service assistant who sent the letter advises Mr. Janssen that a re-issue to name a principal co-owner as a second-named co-owner is not permitted and the bonds are being returned to him.

Mr. Janssen acknowledges that he was the defendant in the lawsuit filed by John Doe in Clinton County in 2003. His sister did have a subscription to the Quad City Times. Mr. Janssen did speak with Attorney Edward (Ned) Wehr about the case. While the bonds were cashed on beginning on May 23, 2003, Mr. Janssen can't recall the connection with the filing of the Clinton County lawsuit.

Mr. Janssen recalled that in May of 2003 he started to cash the bonds because his sister Dorothy was looking for a one-story home to accommodate her health circumstances. In fact, Dorothy did purchase a home valued at \$178,000. However,

he moved into that home before she did, as he explained that she had a lot of things to move. Mr. Janssen stated that he cashed \$712,000 in bonds because he had to pay his expenses, too.

#### APPLICABLE LAW

A party alleging contempt has the burden to prove the contemnor had a duty to obey a court order and willfully failed to perform that duty. Ary v. Iowa District Court for Benton County, 735 N.W.2d 621 (Iowa 2007). The party alleging contempt retains the burden of proof to establish willfulness beyond a reasonable doubt because of the quasi-criminal nature of the proceeding. See Ary, cited above. If the party alleging contempt can show a violation of a court order, the burden shifts to the alleged contemnor to produce evidence suggesting the violation was not willful. See Ary, cited above. Because a finding of contempt must be established by proof beyond a reasonable doubt, substantial evidence sufficient to support a finding of contempt is evidence that could convince a rational trier of fact that the alleged contemnor is guilty of contempt beyond a reasonable doubt. See Ary, cited above.

When contempt is alleged to involve a violation of a court's order, resistance or violation must be found to be willful; acting contrary to a known duty may constitute willfulness for this purpose. In Re Inspection of Titan Tire, 637 N.W.2d 115 (Iowa 2001). "Willful disobedience" of court order, such as will permit conviction for contempt, implies conduct which is intentional and deliberate with a bad or evil purpose or wanton and in disregard of rights of others, or contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemnor had the right or not. In Re Marriage of Ruden, 509 N.W.2d 494 (Iowa App. 1993). An alleged contemnor may avoid adjudication of contempt by proving that a good faith effort was made to comply with

the court order. Interest of B.C.A.K., 508 N.W.2d 738 (Iowa App. 1993).

Defenses to contempt are indefiniteness of the contempt order, and absence of willful disobedience caused by inability to pay. McKinley v. Iowa District Court for Polk County, 542 N.W.2d 822 (Iowa 1996). Uncertainty, indefiniteness, or ambiguity of a court order is a defense to a contempt adjudication. Zimmermann v. Iowa District Court for Benton County, 480 N.W.2d 70 (Iowa 1992).

Iowa Code Section 665.4 provides that punishment for contempt, where not otherwise specifically provided, shall be by a fine not to exceed \$500 or imprisonment in a county jail not exceeding six months or by both such fine and imprisonment. Iowa Code Section 665.5 provides that if the contempt consists in an omission to perform an act which is yet in the power of the person to perform, the person may be imprisoned until the person performs it. In that case the act to be performed must be specified in the warrant of the commitment.

Iowa Code Section 626.1 provides that judgments or orders requiring the payment of money, or the delivery of the possession of property, are to be enforced by execution. Obedience to those requiring the performance of any other act is to be coerced by attachment as for a contempt.

A finding of contempt and order of imprisonment did not involve an effort to collect a debt, as prohibited by statute, but rather, was permissible punishment for a former cohabitant's violation of an equity decree in taking, and retaining or disposing of, items of personal property which were awarded to the other cohabitant under the decree; the trial court expressly declared in its order that the sanction imposed was intended as punishment and not dispositive of the sanctioned cohabitant's continuing obligation to abide by the provisions of the decree. Harris v. Iowa District Court for

Cherokee County, 584 N.W.2d 562 (Iowa 1998).

### CONCLUSIONS

After a judgment in an amount of more than \$1,000,000 was entered against him, James Janssen was specifically ordered and directed to appear before the Court for a debtor's exam. The order specifically set forth the requirement that the defendant should appear at the courthouse and provide information concerning certain assets available to him, including earnings, bank records, and records relating to the purchase of a house at 4315 West High Street, Davenport, Iowa. The order for debtor's exam, specifically advised Mr. Janssen that his failure to provide the documents ordered, without sufficient justification, might result in a contempt citation upon proper application by the plaintiff.

On June 15, 2007, the defendant appeared but failed to provide the documentation as ordered. An affidavit and application for citation of contempt and order setting a hearing on the citation were presented to the Court, and another order setting hearing on July 2, 2007, was signed by the Court. Mr. Janssen was specifically informed that the matters as required for production and documentation as originally ordered by the Court on May 25, 2007, were intended to be an explanation of the dissipation of nearly \$711,000 worth of bonds as set forth on an attached application. Again, the defendant was advised that he might be found in contempt for failure to comply with the order.

The contempt hearing was rescheduled several times, but from the review of the documents and court orders relating to this contempt proceeding as contained within the court file, the Court does now find evidence beyond a reasonable doubt that on October 4, 2007, Mr. Janssen had been well-informed by the Court of his clear, direct and specific duty to obey the court's order by producing certain financial documents

and by appearing personally before the Court to offer explanation with regard to those documents and the dissipation of \$711,000 obtained from cashed savings bonds. On that date James Janssen did personally appear as required.

The Court finds evidence that since this contempt proceeding was initiated in May of 2007, numerous documents, bank records, and other pertinent financial information have been provided Mr. Janssen, as required, to counsel for the plaintiff. The Janssen documents, records and financial information have been reviewed by Gary Shapley, CPA, who has examined all of these matters in order to offer his professional opinion concerning the transactions completed by James Janssen involving the government bonds held in his name and the name of his sister, which ultimately yielded a total cash amount of \$712,648 in 2003.

The Court now finds evidence beyond a reasonable doubt that by March of 2003 Mr. Janssen had sent a letter to the customer service assistant at the U.S. Treasury requesting the re-issue of savings bonds which he had purchased with his name as the principal co-owner and his sister's name as the second-named co-owner. He was informed this could not be done.

By May of 2003 Mr. Janssen had been notified that he was a defendant in a lawsuit filed by John Doe in Clinton County and he did speak with Attorney Ned Wehr about his personal representation in this case. By May 22, 2003, news of this pending lawsuit had been printed in the Quad City Times which was being delivered to the home of Mr. Janssen's sister. On May 23, 2003, Mr. Janssen and his sister began to cash the savings bonds which had been purchased in their names from 1970 until 1994. In a series of seventeen transactions, by October of 2003 they had received total bond proceeds of \$712,648. Not all of the bonds had reached maturity when they were

cashed, making this conduct totally inconsistent with that of an investor.

Records demonstrate that Dorothy Janssen received proceeds from the bonds in the amount of \$557,373 and James Janssen received total proceeds from the interest on certain bonds in the amount of \$155,275. The bond proceeds were received by James Janssen and Dorothy Janssen in the form of cashier's checks in a total amount of \$555,501; \$149,004 deposited in a joint account at Wells Fargo; \$5,182 deposited in another joint account at Wells Fargo; and cash paid in the amount of \$2,961. All cashier's checks were made payable to Dorothy Janssen even though James Janssen was listed as the primary owner of the bonds being cashed.

While proceeds from the bonds in the amount of \$137,645 were immediately deposited in bank accounts on May 7, May 23 and June 2, 2003, and on August 15, 2003, bond proceeds of \$16,540 were immediately deposited, the Court finds evidence that a majority of the more than \$550,000 in cashier's checks and cash received from the bonds was held by James Janssen from as few as twelve days to as many as 546 days before making bank deposits. James Janssen recalled that these cashier's checks may have been held in a kitchen drawer at his home before deposit., and clearly such delayed re-investment of the bond proceeds is totally inconsistent with that of an investor.

The government bonds had been primarily purchased with funds of James Janssen and placed in the names of both James Janssen and Dorothy Janssen. This purchase pattern allows the secondary owner to receive taxable interest income without leaving an income trail to the purchaser, and thus facilitates the concealment of the purchaser's assets. The purchaser does not lose control of the bonds so long as the bonds are retained in the purchaser's custody.

Mr. Janssen says that his lawyer for this lawsuit advised him to put all of his assets in the name of his sister, so he relied on his lawyer and did so. However, going back as far as 1970 James Janssen had been using his sister's name on the bonds purchased in order to obtain financial advantages. The evidence is clear that Mr. Janssen controlled his sister's finances as well as his own over the years and he was aware of the advantages of his financial transactions.

Credible testimony provided by Mr. Shapley concerning the trail of the bonds and the proceeds of those bonds and various accounts is evidence beyond a reasonable doubt that James Janssen was working for a period of months, beginning at least by March of 2003, to secret his assets from a possible judgment against him. Mr. Shapley testified that no other explanation would support any theory that these were normal and typical activities of an investor. Based upon the credible expert testimony of Mr. Shapley the Court finds that additional government bonds in the face amount of \$80,000 have been purchased by James Janssen which have neither been produced during this contempt action nor acknowledged in other fashion by Mr. Janssen.

James Janssen had a clear, definite and certain duty established by court order to appear and explain what happened to the more that \$711,000 received from bond proceeds. James Janssen states that he does not know where the bonds in the total amount of \$80,000 are at this time. The Court does not believe that testimony, and Mr. Janssen has provided no credible evidence of a good faith effort having been made to comply with the court order as it relates to these bonds.

Furthermore, the plaintiff must establish that such failure to obey the court order is willful. The evidence demonstrates beyond a reasonable doubt that James Janssen has a history of financial transactions which he has carefully and calculatedly executed

in an effort to hide his substantial financial assets from any potential creditor. Over the years the conduct of Mr. Janssen has been intentional and deliberate with the motive to amass assets that are beyond the reach of others, including this plaintiff who prevailed in his lawsuit against Mr. Janssen.

The Court finds no sufficient reason for the failure of James Janssen to explain the missing bonds. The Court concludes that this is a willful failure to do so, consistent with the prior actions of James Janssen. For his willful failure to provide information or produce the savings bonds with a face value of \$80,000 at the hearing held on October 4, 2007, as clearly ordered, the Court finds that there is evidence beyond a reasonable doubt that Mr. Janssen is in contempt of the court for his failure to obey the previous court order.

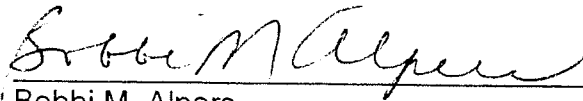
James Janssen shall be afforded an opportunity to purge this contempt. The Court does grant Mr. Janssen a period of two months in which to produce the missing savings bonds in the total amount of \$80,000 or be subject to punishment for this contempt.

On January 7, 2008, Mr. Janssen and his attorney shall appear before the Court at the Scott County Courthouse in Davenport, Iowa, at 8:30 a.m., and at that time James Janssen shall purge the contempt as found or be subject to penalty as provided by the law of contempt proceedings.

THEREFORE, IT IS ORDERED that Defendant James Janssen and his counsel shall appear before the Court personally on January 7, 2008, at 8:30 a.m., at the Scott County Courthouse in Davenport, Iowa, and shall purge himself of contempt by production of the \$80,000 in savings bonds which have not been previously produced as ordered by the Court.



Clerk shall distribute copies of this ruling and order to counsel of record and all of the above is SO ORDERED on this 6th day of November, 2007.



Bobbi M. Alpers  
Judge of the District Court