

Attorney jailed on criminal contempt charges

by Allison Retka

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A Douglas County attorney has been jailed on criminal contempt charges for critical statements he wrote about an associate circuit judge, R. Craig Carter, and prosecutors in an appellate brief for a client.

The Missouri Association of Criminal Defense Attorneys and the American Civil Liberties Union have jumped to the defense of the attorney, Carl E. Smith, who was hit with a 120-day sentence.

Smith has sat in the Ozark County jail since Sept. 28.

Both organizations filed amicus briefs this week with the Missouri Supreme Court, asserting Smith had a First Amendment right to write the statements in the course of representing his client.

Smith's client is Ron D. Jarrett Jr., an attorney who's facing numerous sex offense charges in Wright County, according to the ACLU's amicus brief.

In March 2008, a Douglas County grand jury issued a subpoena for Smith's law office to turn over a 2006 notary log book. Smith fought the subpoena but, Craig, the judge, overruled the motion.

Smith then penned a 200-page appeal to the Missouri Court of Appeals Southern District and requested a writ of prohibition to quash the grand jury subpoena.



Carl Smith

In the writ petition, Smith wrote the prosecutors in Wright and Douglas counties employed each other as assistants. Among other comments, Smith also accused Carter and the prosecuting attorneys of using a Douglas County grand jury to "threaten, instill fear and imprison innocent persons to cover up and chill public awareness of their own apparent misconduct using the power of their positions to do so."

When he filed the appellate brief in April 2008, Smith mailed a copy of the document to Carter's office, to be placed in his client's file. On April 16, 2008, Carter initiated criminal contempt proceedings and appointed the Missouri Attorney General's Office to prosecute the charges.

Carter was the sole witness at Smith's Aug. 8 criminal contempt trial in Platte County. The

R. Craig Carter

jury deliberated for 46 minutes before finding Smith guilty of criminal contempt.

Smith's appellate brief, "though arguably inartful, was ultimately advocacy speech made to benefit his client," said Talmage Newton, the Evans & Dixon attorney in St. Louis who wrote the amicus brief for the criminal defense lawyers' association.

"It may have a negative effect on the criminal defense bar if attorneys believe their advocacy is going to hold them in personal jeopardy," Newton said.

Smith's statements are considered indirect contempt, Newton said, as opposed to verbal or physical disruptions that directly interfere with the administration of justice. A more common example of indirect contempt would be a newspaper editorial published about an ongoing trial that could improperly influence jurors, he said.

But in an appellate brief alleging judicial error or challenging a ruling, a lawyer needs to explain what the judge did wrong, Newton said.

"Feelings will get hurt occasionally, but most judges are pretty thick-skinned and it's water off a duck's back," he said. "Sometimes you have to say strong things to get to the point and illustrate to a high court why you believe 'x, y and z.'"

Wade, the Douglas County prosecutor, declined to comment. Jason MacPhearson, the Wright County prosecutor said Smith frequently besmirches judges and prosecutors in 44th Circuit filings.

Carter, the judge who initiated criminal contempt proceedings against Smith, directed questions to the Missouri Attorney General's Office.

The Attorney General's Office has until Oct. 30 to file documents with the Missouri Supreme Court in response to Smith's petition for a writ of habeas corpus. A spokeswoman for that office didn't immediately know if the office was preparing a response.

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