

FILED
BY: *Seel*
AUG 29 11 43 28

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

HONORABLE STEVEN F. CONN
DIVISION 3
DATE: AUG. 27, 2008

VIRLYNN TINNELL
SUPERIOR COURT CLERK
SC*
VIRLYNN TINNELL, CLERK

COURT NOTICE/ORDER/RULING

STATE OF ARIZONA,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

No. CR-2007-0743 & CR-2007-0953

The State in this case on May 21, 2008, filed an Objection to Defendant's Public Records Request. The Defendant filed a Reply on June 5, 2008, and requested an award of attorneys fees. These pleadings both resulted from a request made in writing by counsel for the Defendant dated May 1, 2008, directed to the Arizona Attorney General's Office requesting release of certain materials believed to be in their possession. As noted in its Minute Order dated June 24, 2008, the State's Objection was filed by Mr. Linnins as a Special Deputy County Attorney and it was not clear whether he was filing that pleading as a representative of the Attorney General's Office or as the special prosecutor in this case. Other than the request for attorneys fees made in the Defendant's Reply, it was not clear that the Court was being asked to rule on any specific issue being presented to it. It was not clear whether the State's Objection was intended to put the defense on notice that its request was not being honored or whether the Court was being asked in some manner to rule on whether the defense request should be granted. It was not clear whether the Defendant's Reply was

asking the Court to rule that their request should be granted or was only asking for attorneys fees. As indicated in its prior Minute Order, the Court was not certain that any issue was being presented to it to rule on.

A review of the applicable statute clarifies that these pleadings probably do not invoke any jurisdiction of the Court in this matter. A.R.S. 39-121, cited by the defense in their request, provides that public records shall be open to inspection by any person. A.R.S. 39-121.01(D) provides in general terms how a request for public records is to be handled. A.R.S. 39-121.02(A) provides that any person who is denied access to public records may appeal the denial through a special action in the Superior Court pursuant to the rules of procedure for special actions. A.R.S. 39-121.02(B) provides that a Superior Court judge may award legal costs, including attorneys fees, to a person wrongfully denied access to a public record. Rule 4(b), Rules of Procedure for Special Actions, sets forth what county a special action shall be filed in. Although the rule does allow the special action to be filed in the county of the plaintiff, which could arguably be the Defendant in this case, under all other circumstances described in Rule 4(b) it would probably have to be filed in Maricopa County. It is not necessarily obvious to the Court that the Defendant at this time considers himself to be a resident of Mohave County.

The bottom line is that the Defendant has not initiated a special action in Mohave County pursuant to A.R.S. 39-121.02(A), so the Court has no jurisdiction to order legal costs or attorneys fees or to order compliance with the request. The Court has not been asked to enter any orders pursuant to Rule 15.

IT IS ORDERED denying the Defendant's request for attorneys fees.

The Court takes no further action at this time regarding defense counsel's request for public records.

cc:

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Honorable Steven F. Conn
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