



Synopsis of CCI vs HSVPOA Ruling

Description

by [Karen Daigle Lundberg](#), July 9, 2019

Synopsis of Judge Robert Herzfeld's ruling in CCI case

I have been asked to write a synopsis of Judge Robert Herzfeld's ruling in the CCI case. Before I begin my synopsis, I would like to state that in my entire career of writing these types of synopses, I have never enjoyed reading a ruling and summarizing it, more than this one. Judge Herzfeld is very down to earth in his rulings; he does not use a lot of legalese, and he in many places is quite funny. I would even venture to state that there are a couple of times in his ruling where he puts HSVPOA, and their attorney, squarely in their place.

Why does Judge Phillips not recuse himself from other HSVPOA cases?

The other thing I would like to mention is that in the Judge Herzfeld's ruling, he gives a timeline of how and why the case was filed. He mentions that this case was originally filed in Garland County, and it was quickly kicked to Saline County, which Garland County felt it needed to be. Once reaching Saline County, it was assigned to Judge Phillips, but was immediately kicked to Judge Herzfeld, the only other judge in Saline County who hears civil cases. I have found this very strange all along, because every other lawsuit HSVPOA is involved in is in Judge Phillips' court. As I learned in Judge Herzfeld's ruling, the reason the case was sent to Judge Herzfeld is because Judge Phillips is a member of HSVPOA, and recused himself from hearing the case. My important question is this: **If Judge Phillips recused himself from the CCI case, then why has he not recused himself from the other lawsuits involving HSVPOA. Something just does not smell right to me here.**

With all of that said, the following is my summary of the ruling, and it is pretty plain and simple.

CCI requested to inspect the books and records of HSVPOA

Due to the fact that there was an [important vote](#) coming up on November 30, 2018, which, if passed,

would modify our Declaration and Articles of Incorporation, which can only be done by a vote of the members in good standing of HSVPOA, one of our two votes. John Cooper requested that HSVPOA make available to him the books and records of HSVPOA, including the salary of three of our executive employees, which he had every right to request per the Arkansas Nonprofit Corporation Act, which states, **“All books and records of a corporation may be inspected by any member for any proper purpose at any reasonable time.”**

HSVPOA did not allow copying of records

HSVPOA agreed to allow Mr. Cooper or his representatives to come and look at the documents requested, with the exception of the salaries of the executives requested, but they allowed no copying, taking photos by cell phones or any other method of technology, and refused to allow the email addresses of the members of HSVPOA. Of course, Mr. Cooper was unable to collect the necessary information with such strict limits given to him by the POA.

HSVPOA's basically only purpose in not allowing Mr. Cooper to access copies of these documents, as they stated in their Answer to the Complaint was the definition of “proper purpose.” Mr. Cooper's purpose for requesting these records was due to the upcoming lawsuit, and to prepare a course of action to protect his assets. HSVPOA did not accept this as a “proper purpose,” which caused [Mr. Cooper to file a lawsuit](#) at great expense, and to hire attorneys, consultants, and the expenditure of many resources.

Ex-Chairman of the BOD refused Mr. Cooper's purpose

Mr. Weiss, our Chairman of the Board at that time refused Mr. Cooper's purpose, and at that time, Mr. Cooper was forced to file a lawsuit in order to be able to gain access to records that were clearly defined by law that not only Mr. Cooper himself but all members of HSVPOA are entitled to inspect.

Proper purpose

By the time the lawsuit was filed, the matter before the Court was simply the definition of “proper purpose,” and whether Arkansas Code was vague. Judge Herzfeld's ruling as to whether the Code was vague was a simple no, but he did add, “Oddly, the Defendant has chosen to view the statute as limiting its own ‘right’ to keep important information secret from its own members.” **Does that sound vaguely familiar? Could Judge Herzfeld have pointed out that what we, the members of HSVPOA have been saying all along is the case? Will they listen to him?**

Judge Herzfeld then went on to state the term “proper purpose” fit exactly Mr. Cooper's purpose in requesting the records. He did define proper purpose and stated some citations regarding proper purpose, but ultimately stated that Mr. Cooper's proper purpose was indeed proper purpose, and HSVPOA was ordered to allow Mr. Cooper and any of HSVPOA's members to inspect the books and records and salaries.

Due to the fact that the statute was not clear as to whether HSVPOA was required to produce copies of the records themselves, Judge Herzfeld ruled that Mr. Cooper or any member could bring in any of their own technology, i.e. calculators, pens, pencils, papers, cell phones, copiers, etc. to review, take

pictures of, or copy any of the books and records, including the salaries requested, as long as they used their own technology to do it. (See the copy machines rolling into the POA offices now LOL).

At this point, Judge Herzfeld ended his ruling, stating any outstanding discovery at this time was mooted by his opinion and hereby dismissed.

Another point

Another point: When Judge Herzfeld gave the two parties the choice of negotiating and agreeing not to appeal, he stated to both parties that if they forced him to file an “iron-clad” ruling, it would be unappealable. I do not take that to mean that the parties cannot appeal, but his ruling was such that an appeals court would not overturn his motion.



Hot Springs Village Property Owners says thank you to Judge Herzfeld

While I have provided this summary, I do urge everyone to read the whole ruling. There is some small legalese in the ruling, but you can read right past that. Judge Herzfeld appears from his ruling to be a “tell it like it is” kind of guy, and there are parts of his ruling that are actually humorous. You don’t often see that from a Judge, and I know I enjoyed reading it.

Enjoy!

Click the PDF below to read the Order granting summary judgment for plaintiff in part (and denying it in part) and denying summary judgment for the defendant

[ck_image-1](#)

[Karen Daigle Lundberg, July 9, 2019](#)

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