



OUT TO LUNCH

PHYSICIANS CHOICE V. MILLER

Pendleton Gaines

Charmiane Claxton of Apperson Crump & Maxwell in Memphis, Tennessee recently sent us this message:

You all have probably already received this but it is too funny to let pass by. In a way though, it does make me think about the many lunches that I've eaten at my desk (like today). Perhaps we should all make it a point to get out more often.

The "this" to which she refers is reproduced on the next four pages. Judge Gaines's order is amusing, certainly, but it is also a model of good sense. Consider, for example, his philosophical approach to long briefs on the third page of his order.

With respect to his comments on alternative venues, we unfortunately lack the resources to evaluate his views and would welcome readers' input. On the lesson to be learned here, though, we agree with Ms. Claxton. No more sack lunches at a desk for us, unless they come in a green bag.

—*The Editors*

Pendleton Gaines is a judge on the Superior Court of Arizona in Maricopa County.

Pendleton Gaines

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-020242

07/19/2006

JUDGE PENDLETON GAINES

CLERK OF THE COURT
A. Beery
Deputy

FILED: 07/21/2006

PHYSICIANS CHOICE OF ARIZONA INC

DAVID A SELDEN

v.

MICKEY MILLER, et al.

DOW GLENN OSTLUND

DAVID ROSENBAUM
ROSENBAUM & ASSOCIATES PC
650 DUNDEE RD
STE 380
NORTHBROOK IL 60062

RULINGS ON PENDING MOTIONS

The Court has reviewed the pending motions. Two will be granted. The others will be deferred.

Plaintiff's Motion to Compel Acceptance of Lunch Invitation

The Court has rarely seen a motion with more merit. The motion will be granted.

The Court has searched in vain in the Arizona Rules of Civil Procedure and cases, as well as the leading treatises on federal and Arizona procedure, to find specific support for Plaintiff's motion. Finding none, the Court concludes that motions of this type are so clearly within the inherent powers of the Court and have been so routinely granted that they are non-controversial and require no precedential support.

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Form V000A

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The writers support the concept. Conversation has been called “the socializing instrument par excellence” (Jose Ortega y Gasset, Invertebrate Spain) and “one of the greatest pleasures in life” (Somerset Maugham, The Moon and Sixpence). John Dryden referred to “Sweet discourse, the banquet of the mind” (The Flower and the Leaf).

Plaintiff’s counsel extended a lunch invitation to Defendant’s counsel “to have a discussion regarding discovery and other matters.” Plaintiff’s counsel offered to “pay for lunch.” Defendant’s counsel failed to respond until the motion was filed.

Defendant’s counsel distrusts Plaintiff’s counsel’s motives and fears that Plaintiff’s counsel’s purpose is to persuade Defendant’s counsel of the lack of merit in the defense case. The Court has no doubt of Defendant’s counsel’s ability to withstand Plaintiff’s counsel’s blandishments and to respond sally for sally and barb for barb. Defendant’s counsel now makes what may be an illusory acceptance of Plaintiff’s counsel’s invitation by saying, “We would love to have lunch at Ruth’s Chris with/on . . .” Plaintiff’s counsel.¹

Plaintiff’s counsel replies somewhat petulantly, criticizing Defendant’s counsel’s acceptance of the lunch invitation on the grounds that Defendant’s counsel is “now attempting to choose the location” and saying that he “will oblige,” but Defendant’s counsel “will pay for its own meal.”

There are a number of fine restaurants within easy driving distance of both counsel’s offices, e.g., Christopher’s, Vincent’s, Morton’s, Donovan’s, Bistro 24 at the Ritz-Carlton, The Arizona Biltmore Grill, Sam’s Café (Biltmore location), Alexi’s, Sophie’s and, if either counsel has a membership, the Phoenix Country Club and the University Club. Counsel may select their own venue or, if unable to agree, shall select from this list in order. The time will be noon during a normal business day. The lunch must be conducted and concluded not later than August 18, 2006.²

Each side may be represented by no more than two (2) lawyers of its own choosing, but the principal counsel on the pending motions must personally appear.

¹ Everyone knows that Ruth’s Chris, while open for dinner, is not open for lunch. This is a matter of which the Court may take judicial notice.

² The Court is aware of the penchant of Plaintiff’s counsel to take extended cruises during the summer months.

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The cost of the lunch will be paid as follows: Total cost will be calculated by the amount of the bill including appetizers, salads, entrees and one non-alcoholic beverage per participant.³ A twenty percent (20%) tip will be added to the bill (which will include tax). Each side will pay its pro rata share according to number of participants. The Court may reapportion the cost on application for good cause or may treat it as a taxable cost under ARS § 12-331(5).

During lunch, counsel will confer regarding the disputes identified in Plaintiff's motion to strike Defendant's discovery motion and Defendant's motions to quash, for protective order and for commission authorizing out-of-state depositions.⁴ At the initiative of Plaintiff's counsel, a brief joint report detailing the parties' agreements and disagreements regarding these motions will be filed with the Court not later than one week following the lunch and, in any event, not later than noon, Wednesday, August 23, 2006.

Defendant's Motion to Strike Proposed Amended Complaint

To demonstrate to counsel that the Court has more on its mind than lunch, the Court has considered Defendant's motion to strike Plaintiff's proposed amended complaint. The motion will be granted.

Plaintiff's proposed amended complaint is 56 pages long and has 554 separately numbered paragraphs. It contains 19 counts. It is prolix and discursive in the extreme. It violates the Court's order of July 22, 2005, permitting the Plaintiff to file "an agreed-upon form of Amended Complaint to clean up housekeeping matters." It is not the "short and plain statement" required by Rule 8(a)(2). It is a pleading of a type specifically condemned in Anserv Insurance Services, Inc., vs. Albrecht, 192 Ariz. 48, 49-50 (1998) (trial court should have stricken 269-page, 1322-paragraph complaint). Most importantly, it violates the observation of French philosopher Blaise Pascal, who concluded a long letter with an apology, saying he "had not the leisure to make it shorter." Since this is a 2003 case with no end in sight, Plaintiff's counsel has the leisure to make his complaint shorter.

³ Alcoholic beverages may be consumed, but at the personal expense of the consumer.

⁴ The Court suggests that serious discussion occur after counsel have eaten. The temperaments of the Court's children always improved after a meal.

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ORDER

IT IS ORDERED:

1. Plaintiff's motion to compel Defendant's counsel's acceptance of lunch invitation is granted on the terms and conditions set forth above.
2. The parties are directed to file the joint report referred to above.
3. Further action on the parties' pending discovery motions is deferred pending receipt of the joint report.
4. Defendant's motion to strike Plaintiff's proposed amended complaint is granted.
5. The oral argument set in this division on August 2, 2006, at 9:15 a.m. is vacated.