

Judge declines to

Fired medical examiner's bid for reinstatement held in abeyance

By **JERRY HAGER**
Staff reporter

WILMINGTON — A federal judge Tuesday refused to set aside a ruling that the state had no cause to fire its chief medical examiner two years ago, claiming she must first decide whether she has legal authority to get involved.

At the end of the hearing U.S.

District Judge Sue L. Robinson took the matter under advisement and said she will issue a decision "promptly."

The issue is the latest legal twist in the state's bitter 14-month attempt to fire Dr. Ali Z. Hameli after charging him with sexually harassing two former employees.

Hameli remains on the payroll but doesn't do any work for the state.

void ruling on Hameli

He wants his job back and he wants to be compensated for damages he claims he has received by the firing, said his lawyer, Sheldon N. Sandler.

The state is just as adamant. The Carper administration doesn't want Hameli back. Carmen R. Nazario, the state secretary of health and social services, does not want "to return a known sexual harasser to the workplace," said deputy attorney general Marsha Kramarck. To emphasize the importance that the state attaches to



Dr. Ali Z. Hameli

the issue of firing Hameli, state Solicitor Michael Rich attended the hearing and presented the rebuttal.

That is where the two sides are.

The issue that brought them into court Tuesday was the role that U.S. Magistrate Mary Pat Trostle played in the case and her ruling three months ago that the state had no reason to fire Hameli.

The case ended up with Trostle through a twisted path.

The state fired Hameli on April

4, 1994. Hameli sued in federal court, claiming he was denied his constitutional right to a hearing.

Robinson ruled that Hameli was right because he was not going to be allowed to cross-examine his accusers at the termination hearing.

She ordered the state to reinstate him, give him back pay and continue to pay him and give him a proper hearing before an independent person.

So both sides agreed to use Trostle, but only after they agreed that her opinion would be binding and non-appealable.

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Hameli: Magistrate's status is in dispute

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Robinson was clearly unhappy that Trostle was used. "If I had it to do over I would have [forbidden] using the magistrate judge as the hearing officer," she said.

Trostle agreed to hear the case in the fall of 1994. After Trostle issued her opinion this February, the state appealed to Robinson.

The quandary Robinson said she is in is that Trostle was acting as an agent for the state, not a judge of the federal court.

Kramarck argued that Trostle was acting as a judge. The hearing was held during the federal court's business hours at the federal court and in her opinion Trostle referred to herself as the court and signed the opinion as magistrate.

Kramarck argued that Trostle didn't even do the job she was supposed to do. "There is no finding on the single issue of sexual harassment," she told Robinson.

And even if there is, under state law Nazario has the final say. Trostle's role was only to make a recommendation, not a ruling, Kra-

marck said.

Sandler said Kramarck is wrong. Trostle didn't believe the testimony of the two women who accused Hameli of harassment. "She rejected the credibility of the persons who said Dr. Hameli engaged in sexual harassment," he said.

He also said that both sides agreed many times that Trostle's opinion would be the final word.

Calling the state's actions "bizarre and outrageous" Sandler told Robinson that "binding means that's the end of the ball game," and added that Robinson had no authority to vacate Trostle's decision.

He said that Nazario is too prejudiced to make the ultimate decision.

Nazario authorized the payment of \$70,000 to each of Hameli's accusers, Sandler said, and then took over the claims of the accusers so the state can try to recover the money from Hameli.

Nazario, Sandler said, "has a pecuniary interest ... The state has an interest in not exonerating Dr. Hameli," he said.