

10-56971

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Edward Peruta, et al.,

Plaintiffs-Appellants,

v.

County of San Diego, et al.,

Defendants-Appellees;

State of California,

Proposed Intervenor-Appellee.

Before O'SCANNLAIN,
THOMAS, and
CALLAHAN, Circuit Judges

Opinion Filed Feb. 13, 2014

On Appeal from the United States District Court
for the Southern District of California
No. 3:09-cv-02371-IEG (BGS)
The Hon. Irma E. Gonzalez, Chief District Judge

**APPLICATION FOR EXEMPTION UNDER
NINTH CIRCUIT RULE 46-5**

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Plaintiffs Edward Peruta et al. challenge San Diego's application of the good cause requirement of California Penal Code §§ 26150, 26155 for concealed carry permits. On February 13, 2014, a panel of this Court held that San Diego's policy violated the Second Amendment. *See Peruta v. San Diego*, No. 10-56971, 2014 WL 555862 at *1, Slip op. at 7 (9th Cir. Feb. 13, 2014). San Diego has declined to seek reconsideration of this ruling. *See San Diego Cnty. Sherriff's Dept., San Diego Sheriff's Decision Regarding the Ninth Circuit's Opinion on CCWs*, Feb. 21, 2014.¹ The State of California has moved to intervene in these proceedings as a Defendant-Appellee. *See State of California's Motion to Intervene, Peruta*, No. 10-56971 (Feb. 27, 2014).

The undersigned counsel, currently employed by the State of California, and who was previously employed by this Court as a law clerk, moves under Ninth Circuit Rule 46-5 for an exemption to allow him to participate in further action on this case. Counsel has filed concurrently a "Notice of Appearance of Counsel" in order to file this application.

ARGUMENT

Under Rule 46-5, a former employee of this Court is barred from participating or assisting "by way of representation, consultation, or

¹ <http://apps.sdsheriff.net/press/Default.aspx?FileLink=fce6dc6b-e015-4c15-8d6c-4e38b4e212e1> (last visited Feb. 27, 2014).

otherwise, in any case that was pending in the Court during the employee's period of employment." However, a former employee may apply for an exemption from this restriction. The application "must demonstrate that there has been a strict compliance with the rule with reference to the particular case, that the attorney had no direct or indirect involvement with the case during employment with the Court, and that the attorney was not employed or assigned in the chambers of any judge who participated in the case during the attorney's employment with the Court." 9th Cir. R. 46-5.

The undersigned counsel worked as a law clerk for this Court from September 6, 2011 until August 24, 2012. Konnoth Decl. ¶ 2. During this time, to his knowledge, counsel had no direct or indirect involvement with this appeal. *Id.* ¶ 3. Further, to his knowledge, the undersigned counsel was neither employed by nor assigned to the chambers of any judge who participated in the case." *Id.* ¶ 4. Accordingly, counsel fits within the parameters for an exemption.

CONCLUSION

For the foregoing reasons, the undersigned counsel respectfully requests that the Court grant an exemption from Ninth Circuit Rule 46-5 and allow him to represent the State of California in this appeal.

Dated: February 27, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California

/s/ Craig J. Konnoth
CRAIG J. KONNOTH
Deputy Solicitor General
*Attorneys for Attorney General, State of
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**DECLARATION OF CRAIG KONNOTH IN
SUPPORT OF APPLICATION FOR
EXEMPTION UNDER NINTH CIRCUIT
RULE 46-5**

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I, Craig Konnoth, declare as follows:

1. I am a Deputy Solicitor General for the State of California. I am competent to testify to the matters in this declaration, and, if called to do so, could and would so testify.

2. Before joining the Attorney General's Office, I was a law clerk for the Hon. M. Margaret McKeown on the Ninth Circuit Court of Appeals. My period of employment extended from September 6, 2011 until August 24, 2012.

3. During my employment at the Ninth Circuit, to my knowledge, I was not involved, either directly or indirectly, in this appeal.

4. During my employment with the Ninth Circuit, to my knowledge, I was not employed or assigned in the chambers of any judge who participated in the case.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on February 27, 2014, in San Francisco, California.

s/ **Craig Konnoth**
Craig Konnoth
Deputy Attorney General

9th Circuit Case Number(s)

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CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

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