

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,

Intervenor.

Before: Sidney R. Thomas, Chief Judge, and Harry Pregerson, Barry G. Silverman, Susan P. Graber, M. Margaret McKeown, William A. Fletcher, Richard A. Paez, Consuelo M. Callahan, Carlos T. Bea, N. Randy Smith and John B. Owens, Circuit Judges.

En banc opinion filed:
June 9, 2016

On Appeal from the United States District Court
for the Southern District of California

No. 3:09-cv-02371-IEG (BGS)
The Honorable Irma E. Gonzalez, Judge

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

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On June 9, 2016, this Court issued its en banc opinion in this appeal, and the companion appeal, *Richards et al. v. Prieto et al.*, No. 11-16255. Plaintiffs-Appellants moved the Court for a full court rehearing en banc. (*Peruta*, No. 10-56971, Dkt. No. 334; *Richards*, No. 11-16255. Dkt. No. 335.) On June 24, 2016, this Court ordered Intervenor State of California to file a response to the petitions by July 15, 2016. (Dkt. No. 336.)

The undersigned counsel, currently employed by the State of California, was previously employed by this Court as a staff attorney from 2007 to 2012. Counsel moves under Ninth Circuit Rule 46-5 for an exemption to allow her to participate in further action in 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 otherwise, in any case that was pending in the Court during the employee’s period of employment.” 9th Cir. R. 46-5. A former employee may apply for an exemption from this restriction if the attorney had no direct or indirect involvement with the case and was not employed or assigned in the chambers of any judge who participated in the case during the attorney’s employment with the Court. *Id.*

The undersigned counsel worked as a staff attorney for this Court from March 19, 2007 until May 28, 2012. Boergers Decl. ¶ 2. During this time, to her knowledge, counsel had no direct or indirect involvement with this appeal, No. 10-56971, or the companion appeal, No. 11-16255. *Id.* ¶ 4. Further, the undersigned counsel was neither employed by nor assigned to the chambers of any judge. *Id.* ¶ 3. Accordingly, counsel fits the parameters for an exemption.

CONCLUSION

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

Dated: June 28, 2016

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
EDWARD C. DUMONT
Solicitor General

S/ KATHLEEN BOERGERS
KATHLEEN BOERGERS
Deputy Solicitor General
Attorneys for State of California

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**DECLARATION OF KATHLEEN BOERGERS
IN SUPPORT OF APPLICATION FOR
EXEMPTION UNDER NINTH CIRCUIT
RULE 46-5**

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I, Kathleen Boergers, declare as follows:

1. I am a Deputy Solicitor General for the California Attorney General's Office. 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 staff attorney in the Motions Unit for the Ninth Circuit Court of Appeals. My period of employment extended from March 19, 2007 until May 28, 2012.
3. During my employment at the Ninth Circuit Staff Attorneys' Office, I was not employed by, or assigned to, the chambers of any judge.
4. During my employment at the Ninth Circuit, to my knowledge, I was not involved, either directly or indirectly, in this appeal, *Peruta et al. v. County of San Diego*, No. 10-56971. To my knowledge, I was also not involved, either directly or indirectly, in the companion appeal, *Richards et al. v. Prieto et al.*, No. 11-16255.

I declare under penalty of perjury that the foregoing is true. Executed on June 29, 2016, in Oakland, California.

s/Kathleen Boergers
Kathleen Boergers
Deputy Solicitor General

CERTIFICATE OF SERVICE

Case Name: Peruta v. County of San Diego No. 10-56971

I hereby certify that on June 29, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

APPLICATION FOR EXEMPTION UNDER NINTH CIRCUIT RULE 46-5

DECLARATION OF KATHLEEN BOERGERS IN SUPPORT OF APPLICATION FOR EXEMPTION UNDER NINTH CIRCUIT RULE 46-5

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 29, 2016, at Oakland, California.

Kathleen Boergers
Declarant

s/Kathleen Boergers
Signature