

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIAN WRENN, *et al.*,

Plaintiffs,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

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Civil Action No. 15- 00162 (FJS)

DEFENDANTS' MOTION FOR CASE REASSIGNMENT

Defendants move under Local Civil Rule (LCvR) 40.6(b) for an Order reassigning this case to a judge of this Court, the United States District Court for the District of Columbia, because the judge to whom it was initially assigned lacks jurisdiction to adjudicate the case. A proposed Order is attached. This motion should be referred to the Chair of the Calendar and Case Management Committee under LCvR 40.1(b) and 40.6(b).

Pursuant to LCvR 7(m), the undersigned discussed the subject motion with opposing counsel, who did not consent to the relief requested.

DATE: October 23, 2015

Respectfully submitted,

KARL A. RACINE

Attorney General for the District of Columbia

ELIZABETH SARAH GERE

Acting Deputy Attorney General

Public Interest Division

/s/ Toni Michelle Jackson

TONI MICHELLE JACKSON, D.C. Bar No. 453765

Chief, Equity Section

/s/ Andrew J. Saindon

ANDREW J. SAINDON, D.C. Bar No. 456987
Senior Assistant Attorney General
441 Fourth Street, N.W., Sixth Floor South
Washington, D.C. 20001
Telephone: (202) 724-6643
Facsimile: (202) 730-1470
E-mail: andy.saindon@dc.gov

/s/ Chad A. Naso

CHAD A. NASO [1001694]
Assistant Attorney General
Office of the Attorney General, DC
441 Fourth Street, NW
Sixth Floor South
Washington, DC 20001
(202) 724-7854 (o)
(202) 741-8951 (f)
chad.naso@dc.gov

Counsel for Defendants

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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANTS' MOTION FOR CASE REASSIGNMENT

Defendants (collectively, the District) respectfully submit this Memorandum of Points and Authorities in Support of their Motion for Case Reassignment, which should be referred to the Chair of the Calendar and Case Management Committee under LCvR 40.1(b) and 40.6(b). In support of the instant motion, and for good cause shown, the District states as follows:

1. On February 3, 2015, the day they filed their Complaint [Doc. No. 1], plaintiffs submitted a Notice of Related Case [Doc. No. 2], asserting that the instant matter “involves common issues of fact” and “grows out of the same event or transaction” as *Palmer v. District of Columbia*, No. 09-1482 (FJS), which had been assigned to Senior Judge Frederick J. Scullin, Jr. (N.D.N.Y.), sitting by designation outside of his home jurisdiction. As a result of that Notice, the clerk then assigned this case to Judge Scullin as well. *See* Docket entry (February 3, 2015).

2. On May 18, 2015, Judge Scullin granted plaintiffs’ motion for a preliminary injunction. *See* Doc. No. 13. The District subsequently noted an appeal from that order. *See* Doc. No. 24. On June 12, 2015, the United States Court of Appeals for the District of Columbia Circuit entered an order staying the preliminary injunction. *See* Doc. No. 26 (re: Order (*per*

curiam), *District of Columbia v. Wrenn*, No. 15-7057 (D.C. Cir. Jun. 12, 2015)). Oral argument on the appeal is scheduled for November 20, 2015. *See* Docket, No. 15-7507 (D.C. Cir.).

3. On September 15, 2015, the D.C. Circuit issued a *per curiam* order directing

[O]n the court's own motion, that the parties file simultaneous supplemental briefs, not to exceed 4,000 words, addressing the following questions: (1) Whether Senior District Judge Frederick J. Scullin, Jr. of the Northern District of New York was authorized by the notice of designation and assignment of July 1, 2011, or any other notice of designation and assignment, to enter any order in this case. *See* 28 U.S.C. §§ 294–296. (2) Whether, if Judge Scullin was not so authorized, he lacked jurisdiction to adjudicate the case. *See Frad v. Kelly*, 302 U.S. 312 (1937).

4. This order was the District's first notice that Judge Scullin might not have been designated to preside over this case.

5. In its brief (copy attached), the District argued that Judge Scullin was not authorized by the notice of designation and assignment of July 1, 2011 (which had assigned him to *Palmer v. District of Columbia*, No. 09-1482, and nine other cases then pending in this district) to hear the instant matter. That notice of designation and assignment authorized Judge Scullin only to hear the ten cases listed, which did not include this one.

6. The District therefore argued that Judge Scullin was without jurisdiction to adjudicate this case. These arguments are incorporated here. Plaintiffs disagreed in their brief (copy attached).

7. Local Civil Rule 40.1(b) provides that:

All matters dealing with the assignment of cases, including but not limited to any efforts to restrain or avoid the enforcement or application of rules under this Part shall be referred to the Chair of the Calendar and Case Management Committee for resolution by the Committee.

8. Local Civil Rule 40.6 (b) provides that:

When reassignments are necessitated by the death, retirement, resignation or incapacity of any judge or by the appointment of a new judge, *or by any other circumstances*, the Calendar and Case Management Committee shall determine and indicate by Order the method by which such reassignments shall be made. (Emphasis added.)

9. The District respectfully requests that the Calendar and Case Management Committee consider this motion pursuant to LCvR 40.1(b), and enter an Order pursuant to LCvR 40.6 reassigning the case to a judge of this Court for all further proceedings.

DATE: October 23, 2015

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

ELIZABETH SARAH GERE
Acting Deputy Attorney General
Public Interest Division

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TONI MICHELLE JACKSON, D.C. Bar No. 453765
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CHAD A. NASO [1001694]
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