

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

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| STEPHEN BEHNKE, <i>et al.</i> , |) | |
| |) | |
| <i>Plaintiffs,</i> |) | CASE NO. 2017 CA 005989 B |
| |) | |
| v. |) | Judge Puig-Lugo |
| |) | |
| DAVID H. HOFFMAN, <i>et al.</i> , |) | Next Event: Status Conference |
| |) | September 14, 2018 |
| <i>Defendants.</i> |) | |
| |) | |

PRAECIPE REGARDING DEVELOPMENTS IN THIS CASE

1. Plaintiffs wish to inform the Court of recent developments in this case:
Request for order to preserve documents
2. In their July 3, 2018, Response to Defendants’ Praecipe, Plaintiffs asked the Court to order Defendant American Psychological Association to preserve on its website documents relevant to this dispute, as required under D.C. Superior Court Rule of Civil Procedure 16(b)(4). That request was prompted by the APA’s removal from the website of the PENS Guidelines, a key document in the dispute. At some point after the request was made, the APA restored the document to its website. Plaintiffs believe, however, that their requested order remains appropriate to ensure that other relevant documents are preserved on the website.
3. After Plaintiffs filed their Response, they obtained an affidavit stating that APA is negotiating with its military-psychology division and other APA members to remove both versions of the Hoffman Report from its website, and that it may then post the Report on a third-party website. As Plaintiffs reaffirmed in their Response, they do not object to the Report’s removal from the APA website, a step they have requested since the beginning of this dispute. However, posting the Report on another website – after having acknowledged its falsehoods – would constitute a republication,

and Plaintiffs would then be entitled to amend their Complaint to add another count.

Status of the litigation

4. *Ohio.* Plaintiffs have until August 6, 2018, to request the Ohio Supreme Court to accept a discretionary review of their jurisdictional dismissal by the Ohio Court of Appeals. Historically, the Supreme Court has accepted fewer than 25% of such requests. It typically makes a decision to accept or reject an appeal within three to six months.

5. *Massachusetts.* As Plaintiffs' July 3, 2018, Response informed the Court, on June 25, three days after the Ohio Court of Appeals dismissed Plaintiffs' jurisdictional appeal, Plaintiffs filed suit in the Superior Court of Suffolk County, Massachusetts, against the defendants in this case and two new defendants: Stephen Soldz, a psychologist resident in Massachusetts over whom this Court would not have jurisdiction, and Sidley Austin (NY) LLP, the Sidley partnership that encompasses the Boston office from which Hoffman worked while conducting interviews in the state. The Massachusetts complaint incorporates new evidence about the roles Soldz and other Massachusetts residents played in the events at issue.

6. The filing was necessary at this point to preserve Plaintiffs' access to a court in at least one jurisdiction, given the litigation's status in Ohio and in the District of Columbia, where Defendants have moved for its dismissal under the D.C. Anti-SLAPP Act. The Massachusetts statute of limitations expired on June 27, 2018, as to the initial publication of the Report, and will continue to expire in the coming months as to other publications described in Plaintiff's complaint.

7. On July 20, 2018, Defendants asked the Massachusetts court on an emergency basis to stay briefing and discovery pending the filing of a later motion requesting a stay of the Massachusetts action. Defendants' emergency motion and Plaintiffs' response are attached as Exhibits A and B.

8. Especially given their limited resources, Plaintiffs have no desire to litigate simultaneously in multiple jurisdictions. But they should be able to proceed in one. Three years after this dispute began, it is time for Plaintiffs' defamation claims to move toward being heard on the merits somewhere, and for discovery to commence. Plaintiffs have been and remain willing to proceed in any jurisdiction where Defendants are not attempting to prevent the case from proceeding on its merits.

9. Towards that end, Plaintiffs are willing to:

- Drop their Ohio appeal if Defendants file their 12(b)(6) motion to Plaintiffs' D.C. Complaint, and that motion shows no reason for which Plaintiffs would be prejudiced by proceeding in D.C. rather than Ohio. This offer was initially made in September 2017, prior to Defendants' filing their motion for a stay.
- Drop APA, Hoffman, and Sidley from the Massachusetts suit if the stay of the D.C. litigation is lifted and the limited discovery Plaintiffs have requested proceeds expeditiously, so Plaintiffs may obtain the necessary information to respond to Defendants' four pending motions. Each of those motions amounts to a request for summary judgement without Plaintiffs having had the benefit of discovery.¹
- Alternatively, dismiss the D.C. suit and the Ohio appeal if Defendants consent to personal jurisdiction in Massachusetts and stipulate that Massachusetts law applies to Defendants' defenses, including any perceived statute of limitations issues.

¹*Aliron Intern. v. Cherokee*, 531 F.3d 863, 865 (D.C. Cir. 2008) ("The district court properly examined [Defendant's] motion to compel arbitration under the summary judgment standard of Federal Rule of Civil Procedure 56(c), as if it were a request for "summary disposition of the issue of whether or not there had been a meeting of the minds on the agreement to arbitrate." (citations omitted)); *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1238 n.32 (D.C. 2016) (finding the D.C. Anti-SLAPP Act's likelihood of success standard to mirror the summary judgment standards imposed by Federal Rule 56).

Dated: July 23, 2018

Respectfully submitted,

/s/ Bonny J. Forrest

Bonny J. Forrest, Esq. (pro hac vice)

555 Front Street, Suite 1403

San Diego, California 92101

(917) 687-0271

Attorney for Plaintiffs Banks, Dunivin, James and
Newman

bonforrest@aol.com

/s/ Louis J. Freeh

Louis J. Freeh, Esq. (D.C. Bar No. 332924)

Freeh Sporkin & Sullivan, LLP

2550 M St NW, First Floor

Washington, DC 20037

(202) 390-5959

Attorney for Plaintiff Behnke

bescript@freehgroup.com

/s/ James R. Klimaski

James R. Klimaski, Esq. (D.C. Bar No. 243543)

Klimaski & Associates, P.C.

1717 N St NW

Washington, DC 20036

(202) 296-5600

Attorney for all Plaintiffs

Klimaski@Klimaskilaw.com

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2018, a true and correct copy of the foregoing Praecipe was filed through the Court's Case File Express electronic filing system, which will automatically send a Case File Express Electronic Notice to Defendants' counsel of record that this filing is completed and available for download at their convenience.

/s/ James R. Klimaski
James R. Klimaski