May 19, 2014 – 9:30 a.m.
Honorable Michael T. Downes
Department 2
Without Oral Argument

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR FOR SNOHOMISH COUNTY

CHRISTOPHER J. HUPY, an individual, and THOMAS BRET HAGGERTY, an individual Plaintiffs, vs. The Actors of KING COUNTY SUPERIOR COURT, et al., Defendants.	No. 14-2-03819-2 DEFENDANTS' RESPONSE TO MOTION FOR PREASSIGNMENT OF JUDICIAL OFFICER/EN BANC PANEL

I. RELIEF REQUESTED

Defendants provide this response to plaintiff Christopher Hupy's motion[1] for preassignment of a judge, or, alternatively, for appointment of a panel of three "unbiased and disinterested" judges to preside over this case ("Motion"). Although ultimately a matter within the sound discretion of the presiding judge, there is no compelling reason to preassign this case, and certainly no basis for the extraordinary measure of appointing a three judge panel.

II. BACKGROUND FACTS

This case involves a lawsuit against the entirety of the King County Superior Court bench (the complaint lists 46 superior judges by name and the rest as John or Jane Does). *Pro se*

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plaintiffs Christopher J. Hupy and Thomas Bret Haggerty seek to enjoin the defendants from permitting the Family Law Section of the King County Bar Association to hold its monthly meetings at no charge in the presiding judge's courtroom over the lunch hour. Plaintiffs, who themselves have attended the meetings, allege that these regular informational sessions constitute, among other things, a lending of credit, a gift of public funds, and, because judges or commissioners may participate in these meetings, the improper use of "judicial intellectual property" to support a private entity. As a result, plaintiffs claim (in affidavits attached to the complaint) that the family law system in King County is unfairly stacked against them and a denial of access to the courts. *See also*, Motion, pg. 2, lns 6-18.

III. QUESTION PRESENTED

1. Does this case involve complex issues of fact or law, or anticipated substantial pretrial proceedings to warrant preassigment under SCLAR 0.02(g)?

IV. LEGAL AUTHORITY AND ARGUMENT

SCLAR 0.02(g) allows the Presiding Judge, in his or her discretion, to preassign a case to a trial department at any time for pretrial proceedings or trial upon motion of a party. According to the rule, preassignment is appropriate for, "Cases involving complex issues of fact or law, or in which substantial pretrial proceedings are anticipated[.]" SCLAR 0.02(g).

None of these circumstances exist here. The events alleged in the complaint are relatively straightforward, as are the legal standards that govern them. As such, preassignment is unnecessary.

The motion also describes the case as one of first impression. Motion, pg. 2, lns. 8-13. Even accepting the claim for argument's sake, that is not the test. Rather, the rule is concerned

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[1] It appears Mr. Haggerty, the other plaintiff in this matter, has not joined in Mr. Hupy's motion. He did not sign the Calendar Note and the signature line in the motion for his name has been left blank.

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with resource allocation—Are the facts, law or pretrial aspects of a case so complex or substantial as to justify removing it from the normal procedures governing litigation and having it managed by a single judge? Regardless of whether the request is for one judge or a panel of three, the answer is in this instance is "No."

The motion also expresses concern that Snohomish County judges will know (or know of) the defendants, thus raising appearance of fairness concerns. *See e.g.*, Motion, pg. 2, lns 5-6; lns 19-20; see also, Exhibit A to Motion (Declaration of Christopher Hupy), pg. 1, par. 2 ("The defendants in this action by virtue of their office have extraordinary power to sway the judicial opinion of this and/or any bench."). However, the appearance of fairness doctrine requires evidence of a judge's actual or potential bias before it will be applied; prejudice is not presumed. *State v. Dominguez*, 81 Wash. App. 325, 328 (1996) (judge's prior representation of defendant as defense attorney and prosecution of defendant as prosecutor did not establish potential bias requiring removal). Even then, it is only violated if a reasonably prudent and disinterested observer would conclude the moving party had not obtained a fair, impartial, and neutral trial. *Dominguez*, at 330.

There is simply no basis for assuming that any member of the Snohomish County Superior Court bench will be biased against the plaintiff, or that plaintiff could not obtain a fair trial. An unsupported fear, even if vigorously asserted, is not evidence.

Finally, the law provides other ways to address plaintiffs' fairness concerns, including, but not limited to alleging venue in an adjacent county, as done here.

V. CONCLUSION

Ultimately, it is within the sound discretion of the trial court to decide whether preassignment is appropriate; however, preassigning this case to one judge is unnecessary based

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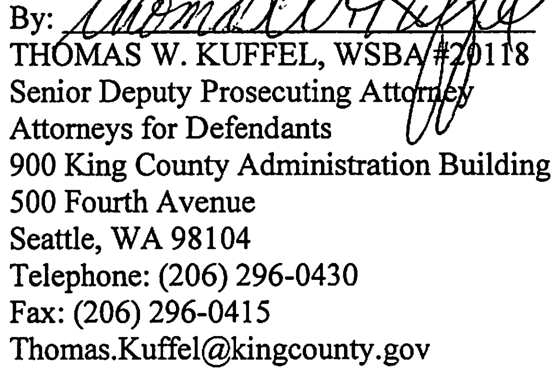
on the standards set out in the local rule. And having three judges preside over the matter would be a waste of judicial resources.

DATED this 14th day of May, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney



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DECLARATION OF FILING AND SERVICE

I hereby certify that on May 14th, 2014, I sent the foregoing document via ABC Legal Messenger to be filed with the Clerk of the Snohomish County Superior Court.

I also caused a copy of the foregoing document(s) to be served on the following individual(s) via E-mail:

Plaintiff Christopher J. Hupy 13222 29th Avenue SE Mill Creek, WA 98012 amakirkland@hotmail.com	Plaintiff Thomas Bret Haggerty 13222 29th Avenue SE Mill Creek, WA 98012 Bhaggerty85@gmail.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 14th day of May, 2014 at Seattle, Washington.

By: [signature]
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